Exhibit 1

UNSUBSTANTIATED ALLEGATIONS OF WRONGDOING INVOLVING THE CLINTON ADMINISTRATION

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Minority Staff Report
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Over the past eight years, Chairman Dan Burton of the House Government Reform Committee and other Republican leaders have repeatedly made sensational allegations of wrongdoing by the Clinton Administration. In pursuing such allegations, Chairman Burton alone has issued over 900 subpoenas; obtained over 2 million pages of documents; and interviewed, deposed, or called to testify over 350 witnesses. The estimated cost to the taxpayer of investigating these allegations has exceeded $23 million.[1]

Chairman Burton or other Republicans have charged that Deputy White House Counsel Vince Foster was murdered as part of a coverup of the Whitewater land deal; that the White House intentionally maintained an "enemies list" of sensitive FBI files; that the IRS targeted the President's enemies for tax audits; that the White House may have been involved in "selling or giving information to the Chinese in exchange for political contributions"; that the White House "altered" videotapes of White House coffees to conceal wrongdoing; that the Clinton Administration sold burial plots in Arlington National Cemetery; that prison tape recordings showed that former Associate Attorney General Webster Hubbell was paid off for his silence; that the Attorney General intentionally misled Congress about Waco; and that problems with the White House e-mail archiving system are "the most significant obstruction of Congressional investigations in U.S. history" and "reach much further" than Watergate.

This report is not intended to suggest that President Clinton or his Administration have always acted properly. There have obviously been instances of mistakes and misconduct that deserve investigation. But frequently the Republican approach -- regardless of the facts -- has been "accuse first, investigate later." Further investigation then often shows the allegations to be unsubstantiated. In fact, FBI interviews showed that one widely publicized Republican allegation was based on nothing more than gossip at a congressional reception.

This approach has done great harm to reputations. The unsubstantiated accusations have frequently received widespread attention. For example, Chairman Burton's allegation regarding White House videotape alteration received widespread media coverage. It was reported by numerous television news programs, including *CBS Morning News,*[2] *CBS This Morning,*[3] *NBC News At Sunrise,*[4] NBC's *Today,*[5] *ABC World News Sunday,*[6] *CNN Early Prime,*[7] *CNN Morning News,*[8] CNN's *Headline News,*[9] CNN's *Early Edition,*[10] Fox's *Morning News,*[11] and *Fox News Now/Fox In Depth.*[12] In addition, newspapers across the country, including the *Washington Post,*[13] the *Las Vegas Review-Journal,*[14] the *Houston Chronicle,*[15] the *Commercial Appeal,*[16] and the *Sun-Sentinel,*[17] published stories focusing on the allegation. Two months later, when Senator Fred Thompson announced that there was no evidence that the videotapes had been doctored, there was minimal press coverage of his statement.[18]

The discussion below examines the facts – and lack thereof – underlying over 25 of the most highly publicized allegations.

Allegation: During 1994 and 1995, Chairman Burton suggested numerous times on the House floor that Deputy White House Counsel Vince Foster had been murdered and that

his murder was related to the investigation into President and Hillary Clinton's involvement in the Whitewater land deal.[19]

The Facts: Chairman Burton's allegations have been repeatedly repudiated.

On August 10, 1993, the United States Park Police announced the following conclusions of its investigation: "Our investigation has found no evidence of foul play. The information gathered from associates, relatives and friends provide us with enough evidence to conclude that . . . Mr. Foster was anxious about his work and he was distressed to the degree that he took his own life."[20] On June 30, 1994, Independent Counsel Robert Fiske issued his report stating that "[t]he overwhelming weight of the evidence compels the conclusion . . . that Vincent Foster committed suicide."[21]

More recently, on October 10, 1997, Independent Counsel Ken Starr concluded: "The available evidence points clearly to suicide as the manner of death."[22]

Allegation: In 1995 and 1996, Republicans alleged that the White House fired the employees of the White House travel office so that White House travel business would be given to Harry Thomason, a political supporter of President Clinton. The Chairman of the House Committee on Government Reform and Oversight, William F. Clinger, said he saw the First Lady's "fingerprints" on efforts to cover up and lie about the travel office firings.[23] Discussing the travel office matter, Rep. Dan Burton said, "The First Lady, according to the notes we have, has lied."[24]

The Facts: In June 2000, the Office of the Independent Counsel issued a press release announcing that its investigation into the Travel Office matter had concluded. Independent Counsel Robert Ray stated:

> This Office has now concluded its investigation into allegations relating to . . . Mrs. Clinton's statements and testimony concerning the Travel Office firings and has fully discharged [her] from criminal liability for matters within this Office's jurisdiction in the Travel Office matter.[25]

Allegation: In June 1996, Chairman Burton alleged that the White House had improperly obtained FBI files of prominent Republicans and that these files "were going to be used for dirty political tricks in the future."[26] Committee Republicans also released a report suggesting that the files were being used by the Clinton Administration to compile a "hit list" or an "enemies list."[27]

The Facts: These allegations have been thoroughly investigated by the Office of the Independent Counsel and repudiated. The Independent Counsel had been charged with examining whether Anthony Marceca, a former White House detailee who had requested the FBI background files at issue, senior White House officials, or Mrs. Clinton had engaged in illegal conduct relating to these files.

According to the report issued by Independent Counsel Ray in March 2000, "neither Anthony Marceca nor any senior White House official, or First Lady Hillary Rodham Clinton, engaged in criminal conduct to obtain through fraudulent means derogatory information about former White House staff." The Independent Counsel also concluded that "Mr. Marceca's alleged criminal conduct did not reflect a conspiracy within the White House," and stated Mr. Marceca was truthful when he testified that "[n]o senior White House official, or Mrs. Clinton, was involved in requesting FBI background reports for improper partisan advantage."[28]

Allegation: Beginning in 1996, Chairman Burton and other Republican leaders suggested that there was a conspiracy between the Chinese government and the Clinton Administration to violate federal campaign finance laws and improperly influence the outcome of the 1996 presidential election. In a February 1997 interview on national television, Chairman Burton stated:

> **If the White House or anybody connected with the White House was selling or giving information to the Chinese in exchange for political contributions, then we have to look into it because that's a felony, and you're selling this country's security – economic security or whatever to a communist power.[29]**

Further, on the House floor in June 1997, Chairman Burton alleged a "massive" Chinese conspiracy:

> **We are investigating a possible massive scheme . . . of funneling millions of dollars of foreign money into the U.S. electoral system. We are investigating allegations that the Chinese government at the highest levels decided to infiltrate our political system.[30]**

The Facts: The House Government Reform Committee to date has spent four years and over $8 million investigating these allegations. No evidence provided to the Committee substantiates the claim that the Administration was "selling or giving information to the Chinese in exchange for political contributions."

The FBI obtained some evidence that China had a plan to try to influence congressional elections.[31] However, no evidence was provided to the Committee that the Chinese government carried out a "massive scheme" to influence the election of President Clinton.

Allegation: In June 1997, Rep. Gerald Solomon, the Chairman of the House Rules Committee, claimed that he had "evidence" from a government source that John Huang, the former Commerce Department official and Democratic National Committee fundraiser, had "committed economic espionage and breached our national security." This allegation was reported on national television and in many newspapers across the country.[32]

The Facts: In August 1997, and again in February 1998, Rep. Solomon was interviewed by the FBI to determine the basis of Rep. Solomon's allegations. During the first interview, Rep.

Solomon told the FBI that he was told by a Senate staffer at a Capitol Hill reception that the staffer "received confirmation that 'a Department of Commerce employee had passed classified information to a foreign government.'" According to the FBI notes on the Solomon interview, the Senate staffer did not say that the employee was John Huang, nor did he say that information went to China. Rep. Solomon did not know who the staffer was.[33]

In his second interview with the FBI, Rep. Solomon recalled that what the staffer said to him was: "Congressman you might like to know that you were right there was someone at Commerce giving out information." Again in this interview, Rep. Solomon told the FBI that he did not know the name of the staffer who made this comment.[34]

Allegation: In August 1997, several Republican leaders called for an independent counsel to investigate allegations by Democratic donor Johnny Chung that former Energy Secretary Hazel O'Leary had, in effect, "shaken down" Mr. Chung by requiring him to make a donation to the charity Africare as a precondition to a meeting with her. On national television, Republican National Committee Chairman Jim Nicholson stated, "[W]e need independent investigation made of people like Hazel O'Leary."[35] Rep. Gerald Solomon, the Chairman of the House Rules Committee, criticized the Attorney General for being "intransigent" in refusing to appoint an independent counsel.[36]

The Facts: A Department of Justice investigation found "no evidence that Mrs. O'Leary had anything to do with the solicitation of the charitable donation."[37] In fact, it turned out that Secretary O'Leary's first contact with Mr. Chung occurred after Mr. Chung had made his contribution, making the allegation factually impossible.[38]

Allegation: In September 1997, Chairman Burton suggested on national television that the Clinton Administration was engaging in an "abuse of power" by using the Internal Revenue Service (IRS) to retaliate against the President's political enemies.[39] *The Washington Times* also quoted the Chairman as stating: "One case might be a coincidence. Two cases might be a coincidence. But what are the chances of this entire litany of people -- all of whom have an adversarial relationship with the President -- being audited?"[40]

The Facts: The Chairman's remarks related to allegations that the IRS was auditing conservative groups and individuals for political purposes. According to these allegations, several non-profit tax-exempt organizations that supported positions different from those of the Clinton Administration were being audited while other organizations favored by the Administration were not.[41]

The Joint Committee on Taxation conducted a three-year bipartisan investigation of these allegations. In March 2000, the Committee reported that it had found no evidence of politically motivated IRS audits.[42] Specifically, the bipartisan report found there was "no credible evidence that tax-exempt organizations were selected for examination, or that the IRS altered the manner in which examinations of tax-exempt organizations were conducted, based on the views espoused by the organizations or individuals related to the organization." Further, the report

found "no credible evidence of intervention by Clinton Administration officials (including Treasury Department and White House officials) in the selection of (or the failure to select) tax-exempt organizations for examination."[43]

Allegation: In October 1997, Chairman Burton held a hearing which he claimed would produce evidence of "blatantly illegal activity by a senior national party official."[44] The star witness at that hearing, David Wang, alleged that then-DNC official John Huang had solicited a conduit contribution from him in person in Los Angeles on August 16, 1996.[45]

The Facts: It was Charlie Trie and his associate Antonio Pan, not John Huang, who solicited Mr. Wang. Unlike Mr. Huang, Mr. Trie and Mr. Pan were never "senior officials" at the DNC. Credit card records, affidavits, and other evidence conclusively demonstrated that Mr. Huang had been in New York, not Los Angeles, on the day in question.[46] Mr. Huang later testified before the Committee and denied Mr. Wang's allegations.[47] On March 1, 2000, Democratic fundraiser Charlie Trie appeared before the Committee and acknowledged that it had been he and Mr. Pan, not Mr. Huang, who had solicited the conduit contribution.[48]

Allegation: At an October 1997 hearing before the House Committee on Government Reform and Oversight, Chairman Burton publicly released a proffer from Democratic fundraisers Gene and Nora Lum. Chairman Burton stated that the proffer indicated that "the solicitation and utilization of foreign money and conduit payments did not begin after the Republicans won control of the Congress in 1994. Rather, it appears that the seeds of today's scandals may have been planted as early as 1991."[49] Specifically, the proffer suggested that President Clinton endorsed the candidacy of a foreign leader in exchange for campaign contributions.[50] This allegation was reported in the *Washington Post* in an article entitled "Story of a Foreign Donor's Deal With '92 Clinton Camp Outlined," and in other national media.[51]

The Facts: To investigate this allegation and other allegations concerning the Lums, Chairman Burton issued nearly 200 information requests that resulted in the receipt of over 40,000 pages of documents, 50 audiotapes, a videotape, and numerous depositions. After this extensive investigation, however, the Chairman was never able to produce any evidence to support the dramatic allegation in the proffer.

The proffer presented by Chairman Burton states that, during the 1992 campaign, the Lums arranged a meeting with a Clinton/Gore official for an individual who had proposed to arrange a "large donation in exchange for a letter signed by the Clinton campaign endorsing the candidacy of a man who is now the leader of an Asian nation." The proffer states that the official "later provided a favorable letter over the name of Clinton," that a "Clinton/Gore official signed then Governor Clinton's name to the letter," and that the individual who made the request for the letter then made a $50,000 contribution that reportedly came from "a foreign person then residing in the United States."[52]

In its investigation, the only letter the Committee obtained that concerned then-Governor Clinton's position on an election in Asia is an October 28, 1992, letter on Clinton/Gore letterhead that pertains to the presidential election in Korea. This document specifically states that then-Governor Clinton does not believe it is appropriate for U.S. public officials to endorse the candidacies in foreign elections. The letter states:

> Thank you for bringing to my attention the impact in Korea that my statement of September 17th has caused. I would appreciate your help in clarifying the situation in Korea through proper channels. My statement was a courtesy reply in response to an invitation to me to attend an event in honor of Chairman Kim Dae-Jung, and to extend to him my greetings. It was not meant to endorse or assist his candidacy in the upcoming presidential election in Korea. I do not believe that any United States government official should endorse a presidential candidate in another country.[53]

Allegation: On October 19, 1997, Chairman Burton appeared on national television and suggested that the White House had deliberately altered videotapes of presidential fund-raising events. On CBS's *Face the Nation*, he said "We think ma--maybe some of those tapes may have been cut off intentionally, they've been--been, you know, altered in some way." He also said that he might hire lip-readers to examine the tapes to figure out what was being said on the tapes.[54]

The Facts: Investigations by the House Government Reform and Oversight Committee and the Senate Governmental Affairs Committee produced no evidence of any tampering with the tapes. Shortly after Chairman Burton made his allegation regarding tape alteration, the Senate Governmental Affairs Committee hired a technical expert, Paul Ginsburg, to analyze the videotapes to determine whether they had been doctored. Mr. Ginsburg concluded that there was no evidence of tampering.[55] In addition, Colonel Joseph Simmons, commander of the White House Communications Agency (WHCA), Colonel Alan Sullivan, head of the White House Military Office which oversees WHCA, and Steven Smith, chief of operations of WHCA, all testified under oath before the House Government Reform and Oversight Committee in October 1997 that they were unaware of any alteration of the videotapes.[56]

Allegation: In November 1997, Republican leaders drew on unsubstantiated reports by conservative radio talk shows and publications to accuse the Clinton Administration of selling burial plots in Arlington National Cemetery for campaign contributions.[57] Republican Party Chairman Jim Nicholson accused the Administration of a "despicable political scheme," and several Republican leaders, including Chairman Burton, called for investigations.[58] Representative Gerald Solomon stated, "[t]his latest outrage is one more slap in the face of every American who ever wore the uniform of their country, who seem to be special objects of contempt in this administration."[59]

The Facts: The Army has established restrictive eligibility requirements for burial at Arlington. Individuals who are eligible for Arlington National Cemetery burial sites include service members who died while on active duty, honorably discharged members of the armed forces who

have been awarded certain high military distinctions, and surviving spouses of individuals already buried at Arlington, among others. The Secretary of the Army may grant waivers of these requirements.[60]

In January 1998, the General Accounting Office (GAO) concluded an independent investigation of the allegations that waivers were granted in exchange for political contributions. As part of this investigation, GAO analyzed the laws and regulations concerning burials at Arlington, conducted in-depth review of Department of Army case files regarding approved and denied waivers, and had discussions with officials responsible for waiver decisions.[61]

GAO's report stated: "[W]e found no evidence in the records we reviewed to support recent media reports that political contributions have played a role in waiver decisions." Further, GAO stated: "Where the records show some involvement or interest in a particular case on the part of the President, executive branch officials, or Members of Congress or their staffs, the documents indicate only such factors as a desire to help a constituent or a conviction that the merits of the person being considered warranted a waiver."[62]

Allegation: In January 1998, Chairman Burton held four days of hearings into whether campaign contributions influenced the actions of Secretary of the Interior Bruce Babbitt or other Department of the Interior officials with respect to a decision to deny an Indian gambling application in Hudson, Wisconsin. During those hearings, Chairman Burton alleged that the decision was a "political payoff" and that it "stinks" and "smells."[63]

The Facts: On August 22, 2000, Independent Counsel Carol Elder Bruce released the report of her investigation into the Hudson casino decision. She found that the allegations of political payoff were unsubstantiated, concluding:

> A full review of the evidence . . . indicates that neither Babbitt nor any government official at Interior or the White House entered into any sort of specific and corrupt agreement to influence the outcome of the Hudson casino application in return for campaign contributions to the DNC.[64]

Allegation: In April 1998, Chairman Burton suggested that President Clinton had created a national monument in Utah in order to benefit the Lippo Group, an Indonesian conglomerate with coal interests in Indonesia.[65] James Riady, an executive of the Lippo Group, was a contributor to the DNC. In June 1998, in a statement on the House floor, Chairman Burton reiterated his allegation: "[T]he President made the Utah Monument a national park. What is the significance of that? The largest clean-burning coal facility in the United States, billions and billions of dollars of clean-burning coal are in the Utah Monument. It could have been mined environmentally safely according to U.S. engineers. Who would benefit from turning that into a national park so you cannot mine there? The Riady group, the Lippo Group, and Indonesia has the largest clean-burning coal facility, mining facility, in southeast Asia. They were one of the largest contributors. Their hands

are all over, all over these contributions coming in from Communist China, from Macao and from Indonesia. Could there be a connection here?"[66]

The Facts: In September 1996, President Clinton set aside as a national monument 1.7 million acres of coal-rich land in Utah under a 1906 law that allows the president to designate national monuments without congressional approval.[67] After two years of investigation, the Committee produced no evidence that there is any connection between the designation of this land as a monument and Riady group or any other contributions.[68]

Allegation: In April 1998, Chairman Burton released transcripts of selected portions of Webster Hubbell's prison telephone conversations. According to these transcripts, if Mr. Hubbell had filed a lawsuit against his former law firm, it would have "opened up" the First Lady to allegations, and for this reason Mr. Hubbell had decided to "roll over" to protect the First Lady. These transcripts included a quote of Mrs. Hubbell saying, "And that you are opening Hillary up to all of this," and Mr. Hubbell responding, "I will not raise those allegations that might open it up to Hillary" and "So, I need to roll over one more time." These quotes were taken from a two-hour March 25, 1996, conversation between the Hubbells.[69]

The Facts: Webster Hubbell was Assistant Attorney General until March 1994. Prior to that, he was a partner with Hillary Clinton at the Rose Law Firm in Little Rock, Arkansas. In December 1994, Mr. Hubbell pled guilty to tax evasion and mail fraud and went to prison for 16 months.

During his imprisonment, Mr. Hubbell's phone calls to his friends, family, and lawyers were routinely taped by prison authorities. Such taping is standard in federal prisons. These tapes were turned over to the Government Reform and Oversight Committee. Although the tapes are supposed to be protected by the Privacy Act, Chairman Burton released a document in April 1998 entitled the "Hubbell Master Tape Log," which contained what were purported to be excerpts from these tapes. However, it was subsequently revealed that many of these excerpts were in fact inaccurate or omitted exculpatory statements made by Mr. Hubbell that directly contradicted the allegations.[70]

For example, while the "Hubbell Master Tape Log" quoted the above portions of the March 25, 1996, conversation between Mr. and Mrs. Hubbell, it omitted a later portion of the same conversation that appears to exonerate the First Lady. The later portion of that conversation follows, with the portions that Chairman Burton omitted from the "Hubbell Master Tape Log" underlined:

> Mr. Hubbell: Now, Suzy, I say this with love for my friend Bill Kennedy, and I do love him, he's been a good friend, he's one of the most vulnerable people in my counterclaim. Ok?
>
> Mrs. Hubbell: I know.

Mr. Hubbell: Ok, Hillary's not, Hillary isn't, the only thing is people say why didn't she know what was going on. And I wish she never paid any attention to what was going on in the firm. That's the gospel truth. She just had no idea what was going on. She didn't participate in any of this.

Mrs. Hubbell: They wouldn't have let her if she tried.

Mr. Hubbell: Of course not.

The "Hubbell Master Tape Log" released by the Chairman also included an underlined passage in which Mr. Hubbell allegedly said: "The Riady is just not easy to do business with me while I'm here." In fact, the actual tape states: "The reality is it's just not easy to do business with me while I'm here."

Allegation: In April 1998, Chairman Burton sought immunity from the Committee for four witnesses: Nancy Lee, Irene Wu, Larry Wong, and Kent La. He and other Republicans leaders, including Speaker Newt Gingrich, alleged that these witnesses had important information about illegal contributions from the Chinese government during the 1996 elections.[71]

Speaker Gingrich alleged that the four witnesses would provide information on "a threat to the fabric of our political system."[72] Rep. John Boehner alleged that the witnesses had "direct knowledge about how the Chinese government made illegal campaign contributions" and stated that the decision regarding granting immunity "is about determining whether American lives have been put at risk."[73] Committee Republican Rep. Shadegg stated that one of the witnesses, Larry Wong, "is believed to have relevant information regarding the conduit for contributions made by the Lums and others in the 1992 fund-raising by John Huang and James Riady."[74]

The Facts: In June 1998, the Committee provided these witnesses with immunity. After they were immunized, their testimony revealed that none had any knowledge whatsoever about alleged Chinese efforts to influence American elections. For example, Mr. Wong's primary responsibilities in working for Democratic donor Nora Lum were to register voters and serve as a volunteer cook.[75] Following is the total testimony he provided regarding James Riady:

Majority Counsel: Did Nora ever discuss meeting James Riady?
Mr. Wong: James who?
* * *
Majority Counsel: James Riady.
Mr. Wong: No.[76]

Allegation: In May 1998, Rep. Curt Weldon suggested on the House floor that the President could have committed treason. Rep. Weldon's remarks involved allegations that the political contributions of the Chief Executive Officer of Loral Corporation, Bernard

Schwartz, had influenced the President's decision to authorize the transfer of certain technology to China. Rep. Weldon described this issue as a "scandal that is unfolding that I think will dwarf every scandal that we have seen talked about on this floor in the past 6 years," and said, "this scandal involves potential treason."[77] The *National Journal* reported this allegation in an article that referred to Rep. Weldon as "a respected senior member of the National Security Committee."[78]

The Facts: The Department of Justice examined the allegations relating to whether campaign contributions influenced export control decisions and found them to be unfounded.[79] In August 1998, Lee Radek, chief of the Department's public integrity section, wrote that "there is not a scintilla of evidence – or information – that the President was corruptly influenced by Bernard Schwartz."[80] Charles La Bella, then head of the Department's campaign finance task force, agreed with Mr. Radek's assessment that "this was a matter which likely did not merit any investigation."[81]

A House select committee investigated allegations relating to United States technology transfers to China, and whether campaign contributions influenced export control decisions. In May 1999, the Committee findings were made public. The Committee's bipartisan findings also did not substantiate Rep. Weldon's suggestions of treason by the President.[82]

Allegation: In September 1998, Rep. David McIntosh sent a criminal referral to the Department of Justice alleging that White House Deputy Counsel Cheryl Mills provided false testimony to Congress and obstructed justice.[83] He told the *Washington Post* that there was "very strong evidence" that Ms. Mills lied to Congress.[84]

The Facts: Rep. McIntosh's claims were based on a run-of-the-mill document dispute. Ms. Mills believed that two documents out of over 27,000 pages of documents produced to the Government Reform and Oversight Committee were not responsive to a request from Rep. McIntosh, while Rep. McIntosh believed the two documents were responsive. Instead of viewing this disagreement as a difference in judgment, Rep. McIntosh charged that Ms. Mills was obstructing justice and that she lied to the Committee.[85] The Justice Department investigated Rep. McIntosh's allegations and found them to be without merit.[86]

Allegation: In October 1998, Rep. David McIntosh alleged that the President, First Lady, and senior Administration officials were involved in "theft of government property" for political purposes. To support this claim, Rep. McIntosh claimed that the President's 1993 and 1994 holiday card lists had been knowingly delivered to others outside of the government, and that, with respect to the holiday card project, evidence suggested a "criminal conspiracy to circumvent the prohibition on transferring data to the DNC."[87]

The Facts: The White House database, known as "WhoDB," is a computerized rolodex used to track contacts of citizens with the White House and to create a holiday card list. In putting together the holiday card list, the Clinton Administration followed the procedures established by previous administrations. A number of entities, including the White House and the Democratic

National Committee, created lists of card recipients, and the White House hired an outside contractor to merge the lists, and produce and mail the cards. As with past Administrations, the production and mailing costs of the holiday card project were paid for by the President's political party to avoid any appearance that taxpayer funds were being used to pay for greetings to political supporters.

The evidence showed that the contractor charged with eliminating duplicate names from the 1993 holiday card list failed to remove the list from its computer. This computer was subsequently moved – for unrelated reasons – to the 1996 Clinton/Gore campaign. The Committee uncovered no evidence that this list was ever used for campaign purposes. In fact, computer records showed that the Clinton/Gore campaign never accessed it, and it appears that the campaign was not aware that the computer contained this list.

With respect to the 1994 holiday card list, a DNC employee learned that the contractor charged with eliminating duplicate names from the list did not properly "de-dupe" the list. Therefore, she worked with her parents and several volunteers over a weekend to properly perform this task. The evidence indicates that neither the 1994 nor the 1993 holiday card list was used for any other purpose than sending out the holiday cards.[88]

Allegation: In March 1999, Chairman Burton sent a criminal referral to Department of Justice alleging that Charles Duncan, Associate Director of the Office of Presidential Personnel at the White House, made false statements to the Committee regarding the appointment of Yah Lin "Charlie" Trie to the Bingaman Commission.[89]

The Facts: Chairman Burton alleged that Mr. Duncan made false statements in his answers to Committee interrogatories in April 1998.[90] These answers included statements by Mr. Duncan that, to the best of his recollection, no one expressed opposition to him regarding the appointment of Mr. Trie to a trade commission known as the "Bingaman Commission."[91] The main basis for the Chairman's allegation was that Mr. Duncan's responses were "irreconcilable" with statements purportedly made by another witness, Steven Clemons.[92]

Investigation revealed that Mr. Clemons's statements were apparently misrepresented by Mr. Burton's staff. Mr. Clemons was interviewed by two junior majority attorneys without representation of counsel. Immediately after the majority released the majority staff's interview notes of the Clemons interview in February 1998, Mr. Clemons issued a public statement noting that he had never seen the notes, he had not been given the opportunity to review them for accuracy, and that "the notes have significant inaccuracies and misrepresentations . . . about the important matters which were discussed."[93] The Department of Justice closed its investigation of Mr. Duncan without bringing any charges.[94]

Allegation: In June 1999, Chairman Burton issued a press release accusing Defense Department officials of attempting to tamper with the computer of a Committee witness, Dr. Peter Leitner, of the Defense Threat Reduction Agency (DTRA), while he was testifying before the House Committee on Government Reform. The Chairman alleged, "While Dr.

Leitner was telling my committee about the retaliation he suffered for bringing his concerns to his superiors and Congress, his supervisor was trying to secretly access his computer. This smacks of mob tactics." He further commented, "George Orwell couldn't have dreamed this up."[95]

The Facts: Both the Committee and the Air Force Office of Special Investigations subsequently conducted investigations regarding the allegation of computer tampering. The Committee interviewed 11 DTRA employees, obtained relevant documents, and learned that the allegation was untrue. Instead, the incident was nothing more than a routine effort to obtain files in the witness's computer that were necessary to complete an already overdue project.

When Dr. Leitner was on leave to testify before the Committee on June 24, 1999, his superior, Colonel Raymond A. Willson, had reassigned a task of Dr. Leitner's to another DTRA employee. This reassignment -- responding to a letter from Senator Phil Gramm -- occurred because DTRA's internal due date for the project was passed and Dr. Leitner's draft response was not accurate. As part of reassigning the task, Col. Willson asked the office's technical division to transfer relevant files from Dr. Leitner's computer. The transfer never occurred, however, because the employee to whom the task was reassigned did not need Dr. Leitner's files to complete the task. Dr. Leitner's computer was not touched.[96]

On July 12, 1999, the Committee also learned that the Air Force Office of Special Investigations had completed its investigation and found that Col. Willson had done nothing improper.

Allegation: In July 1999 testimony before the House Rules Committee, Chairman Burton stated that the House Committee on Government Reform had received information indicating that the Attorney General "personally" changed a policy related to release of information by the Department of Justice so that an attorney she knew "could help her client."[97]

The Facts: One year after Chairman Burton testified before the Rules Committee, the House Government Reform Committee took testimony from the relevant witnesses at a July 27, 2000, hearing.

Chairman Burton's allegations concerned efforts by a Miami attorney, Rebekah Poston, to obtain information for her client, who had been sued in a Japanese court for libel by a Japanese citizen named Nobuo Abe. The alleged statements at the heart of this lawsuit related to whether Mr. Abe had been arrested or detained in Seattle in 1963. Mr. Abe maintained that he had never been detained and that statements to the contrary made by Ms. Poston's client were defamatory.[98] In order to support her client's interests in this lawsuit, Ms. Poston filed Freedom of Information Act (FOIA) requests with several components of the Department of Justice in November 1994 seeking records that established that her client's statement were true and that Mr. Abe had, in fact, been arrested or detained.

In response to Ms. Poston's FOIA requests, the INS, Bureau of Prisons, and Executive Office of the United States Attorneys informed Ms. Poston that no records on Mr. Abe existed.[99] The Department of Justice, however, initially informed Ms. Poston that it was its policy not to confirm or deny whether the Justice Department maintains such files on an individual unless the individual authorizes such a confirmation or denial.[100] After Ms. Poston appealed this decision and threatened litigation on the matter, the Justice Department reversed its decision and confirmed to her that no records on Mr. Abe existed. This decision to confirm the lack of records was legal and it was damaging to Ms. Poston's client. The Justice Department official who directed this decision testified that he believed it was appropriate because it precluded potential litigation and did not deprive anyone of privacy rights because no release of records was involved.[101]

Although the Chairman suggested that the Attorney General "personally" changed Department policy to allow release of information, the records produced to the Committee show that the Attorney General recused herself from the decision.[102] John Hogan, who was Attorney General Reno's chief of staff at the time of Ms. Poston's FOIA request, testified before the House Government Reform Committee that the Attorney General "had no role in this decision whatsoever, initially or at any stage."[103]

Allegation: In August and September 1999, Chairman Burton alleged that Attorney General Reno had intentionally withheld evidence from Congress on the use of "military rounds" of tear gas, which may have some potential to ignite a fire, during the siege of the Branch Davidian compound in Waco, TX. Specifically, on a national radio news broadcast in August 1999, he stated that Attorney General Reno "should be summarily removed, either because she's incompetent, number one, or, number two, she's blocking for the President and covering things up, which is what I believe."[104]

Further, on September 10, 1999, Chairman Burton wrote the Attorney General regarding a 49-page FBI lab report that on page 49 references the use of military tear gas at Waco. He stated that the Department had failed to produce that page to the Committee on Government Reform during the Committee's Waco investigation in 1995, and asserted that this failure "raises more questions about whether this Committee was intentionally misled during the original Waco investigation."[105] In a subsequent television interview, Chairman Burton stated, "with the 49th page of this report not given to Congress when we were having oversight investigations into the tragedy at Waco and that was the very definitive piece of paper that could have given us some information, it sure looks like they were withholding information."[106]

The Facts: Evidence regarding the use of "military rounds" of tear gas was in Chairman Burton's own files at the time he alleged that the Department of Justice had withheld this information. Within days after Chairman Burton's allegations, the minority staff found several documents provided by the Department of Justice to Congress in 1995 that explicitly describe the use of military tear gas rounds at Waco on April 19, 1993.[107]

Further, contrary to Chairman Burton's allegations, the Department of Justice in fact had

produced to the Committee copies of the FBI lab report that did include the 49th page. Former Senator John Danforth, whom the Attorney General appointed as a special counsel to conduct an independent investigation of Waco-related allegations, recently issued a report that commented as follows on document production to congressional committees:

> [W]hile one copy of the report did not contain the 49th page, the Committees were provided with at least two copies of the lab report in 1995 which did contain the 49th page. The Office of Special Counsel easily located these complete copies of the lab report at the Committees' offices when it reviewed the Committees' copy of the 1995 Department of Justice production. The Department of Justice document production to the Committees also included several other documents that referred to the use of the military tear gas rounds, including the criminal team's witness summary chart and interview notes. The Special Counsel has concluded that the missing page on one copy of the lab report provided to the Committees is attributable to an innocent photocopying error and the Office of Special Counsel will not pursue the matter further.[108]

Allegation: In November 1999, Chairman Burton appeared on television and claimed that FBI notes of interviews with John Huang show that the President was a knowing participant in an illegal foreign campaign contribution scheme. According to the Chairman, "Huang says that James Riady told the President he would raise a million dollars from foreign sources for his campaign," that "$700,000 was then raised by the Riady group in Indonesia," and that "that money was reimbursed by the Riadys through intermediaries in the United States. All that was illegal campaign contributions." He further stated: "[T]his $700,000 that came in – the President knew that James Riady was doing it. He knew it was foreign money coming in from the Lippo Group in Jakarta, Indonesia, and he didn't decline it. He accepted it, used it in his campaign, and got elected."[109]

The Facts: The FBI interview notes do not support the Chairman's allegation. The FBI notes of interviews with Mr. Huang do indicate that Mr. Riady, who was a legal resident at the time, told President Clinton that he would like to raise one million dollars.[110] The notes do not indicate, however, that Mr. Riady discussed the source of the contributions he intended to raise, and Mr. Huang told the FBI that he personally never discussed individual contributions or the sources of such contributions with the President.[111]

In December 1999, John Huang appeared before the Committee. He testified that he had no knowledge regarding whether President Clinton knew of foreign money coming from the Lippo group to his campaign, and that he did not believe that the President knew about it. He further stated that he had no knowledge that Mr. Riady indicated to the President the source of the money he intended to raise.[112] In addition, Mr. Huang testified that, as far as he knew, President Clinton had not participated in or had any knowledge of efforts to raise illegal foreign campaign contributions.[113]

Allegation: In December 1999, Chairman Burton alleged that the White House prevented White House Communications Agency (WHCA) personnel from filming the President

meeting with James Riady, a figure from the campaign finance investigation, at an Asia-Pacific Economic Cooperation (APEC) summit meeting in New Zealand in September 1999. During a December 15, 1999, hearing entitled "The Role of John Huang and the Riady Family in Political Fundraising," Chairman Burton showed the two tapes made by the WHCA personnel, and then showed a video filmed by a press camera. Of the third tape, the Chairman said:

> **That shows a little different picture. The White House tapes don't show it, but President Clinton really did pay some special attention to Mr. Riady. This White House is so consumed with covering things up that their taxpayer-funded photographer wouldn't even allow a tape to be made of the President shaking Mr. Riady's hand. No one minded the President meeting Mr. Riady. They just didn't want anyone to know how warmly he was greeted because of the problems surrounding Mr. Riady.[114]**

The Facts: President Clinton shook James Riady's hand in a rope line in New Zealand in September 1999. One of the WHCA cameras filming the President from the side stopped filming as the President greeted Mr. Riady. The other camera, filming the President head-on, panned away from the President as he moved down the rope line and did not return to him until he moved past Mr. Riady. The third camera, the camera Chairman Burton claimed was operated by a member of the press, captured the whole exchange between the President and Mr. Riady. This exchange lasted approximately 10 seconds and consisted of a handshake and a brief, inaudible conversation.

Committee staff interviewed Jon Baker, the person who operated the camera filming the President from the side, and Quinton Gipson, the person who operated the camera filming the President head-on. Mr. Baker told staff that no one instructed him not to film the President and Mr. Riady and he did not know who Mr. Riady was. Similarly, Mr. Gipson said he did not know who James Riady was and that he did not get any guidance about taping the event from anyone.

WHCA policy is to film any remarks the President gives, but not necessarily to film every move the President makes. WHCA camera operators do not take direction from the White House about how to cover events. Mr. Baker told Committee staff that he stopped filming when he did because he had to pack up his equipment and rush to join the motorcade and it was a coincidence that neither he nor the other cameraman captured the full exchange between the President and Mr. Riady.

Allegation: In January 2000, Rep. Howard Coble, chairman of the House Judiciary Subcommittee on the Courts and Intellectual Property, asked the Judicial Council of the D.C. Circuit to investigate Chief District Judge Norma Holloway Johnson's decision to bypass random case assignments on several campaign finance cases. He charged that Judge Johnson's decision "may have been prejudicial to the effective and impartial administration of court business." In May 2000, Chairman Burton commented on Judge Johnson's actions as follows: "The appearance here is that Judge Johnson has deliberately given these cases to Clinton appointees to protect the President and Vice President."[115]

The Facts: In 1998, Judge Johnson assigned three cases to judges appointed by President Clinton, instead of using the court's regular practice of random assignments by computer. These cases included a tax case against former Associate Attorney General Webster Hubbell and indictments against Democratic fundraisers Charlie Trie and Pauline Kanchanalak. In January 2000, Rep. Coble and Judicial Watch filed complaints with the Judicial Council of the D.C. Circuit regarding Judge Johnson's conduct. A seven-judge panel conducted a 10-month investigation of these complaints. In February 2001, the panel concluded that Judge Johnson "did not assign cases with a political or partisan motivation or engage in any deliberate or even clear violation of the rules."[116]

Allegation: In July 2000, Chairman Burton said a videotape of a December 15, 1995, coffee at the White House indicates that Vice President Gore suggested that DNC issue advertisements be played for Democratic donor James Riady, who has been the subject of campaign finance probes. According to the Chairman, Vice President Gore "apparently states: 'We oughta, we oughta, we oughta show Mr. Riady the tapes, some of the ad tapes.'"[117]

The Facts: Chairman Burton played the videotape at a July 20, 2000, hearing of the Government Reform Committee. However, it was not possible to determine what was said on the tape. Further, it was impossible to determine to whom the Vice President was speaking because he was not on camera during the alleged comment. A *Reuters* reporter describing the playing of the videotape at the hearing wrote, "Gore's muffled words were not clear."[118]

When Chairman Burton played the tape on Fox Television's program *Hannity and Colmes*, the person whose job it is to transcribe the show transcribed the tape excerpt as follows:

> We ought to -- we ought to show that to (unintelligible) here, let (unintelligible) tapes, some of the ad tapes (unintelligible).[119]

Allegation: In October 2000, the House Government Reform Committee majority released a report claiming that the Committee's investigation of White House e-mail problems had uncovered a scandal that exceeds Watergate. The majority report asserted:

> **The implications of these revelations are profound. When the Nixon White House was forced to admit that there was an eighteen-and-a-half minute gap on a recorded tape, there was a firestorm of criticism. The "gap" created by hundreds of thousands of missing e-mails, and by a Vice Presidential staff decision to manage records so they could not be searched, is of no less consequence. If senior White House personnel were aware of these problems, and if they failed to take effective measures to recover the withheld information – or inform those with outstanding document requests – then *the e-mail matter can fairly be called the most significant obstruction of Congressional investigations in U.S. history. While the White House's obstruction in Watergate related only to the Watergate break-in, the potential obstruction of justice by the Clinton White House reaches much further.*[120]**

The Facts: Several problems relating to the e-mail archiving system at the White House over the past few years prevented a subset of White House e-mails from being archived. These problems may have had some impact on White House document production, because the White House conducted searches of archived e-mails to respond to information requests from investigators. The Committee received no information that any White House official intentionally created the e-mail problems, made any attempt to impede investigation of the problems, or had any knowledge of the content of e-mails that may not have been captured.[121]

Allegation: In November 2000, Chairman Burton suggested that Vice President Gore had inappropriately interfered with a Drug Enforcement Administration investigation in Houston, Texas, of James Prince and his associates at Rap-A-Lot Records. Chairman Burton further charged that Attorney General Reno was obstructing congressional review of this matter. Discussing the Government Reform Committee's inquiry into the Prince/Rap-A-Lot matter, the Chairman told the *Dallas Morning News*, "Janet Reno is blocking, and I believe, obstructing justice for political reasons."[122] Discussing Mr. Prince, the Chairman said, "He gives a million to a church, the vice president goes to that church, and two days later, somebody [says they're] closing the case? Something's wrong. They're blocking us because I think they're afraid that this might be an embarrassment to the vice president."[123] He also told the media that there were allegations that Prince had offered $1 million to the Vice President's campaign before the Vice President visited the church Mr. Prince allegedly attended.[124]

The Facts: The evidence does indicate that on March 12, 2000, Vice President Gore visited a large Houston church that Mr. Prince attended.[125] The evidence before the Committee, however, does not support any of the other allegations. There is no evidence that anyone raised the Prince/Rap-A-Lot matter with the Vice President during that visit, or that the Vice President interfered with or took any actions at all related to the DEA's investigation of the Prince/Rap-A-Lot matter. And there is no evidence in the Committee record that demonstrates any inappropriate actions by the Attorney General in this matter. The only evidence the Committee received regarding an alleged contribution by Mr. Prince to the Vice President is a statement made by a DEA agent that he received an unsolicited phone call from a confidential source who provided third-hand, uncorroborated information that such a contribution may have been made.[126] There is no record of any such contribution to either Vice President Gore or Democratic Party organizations.

The Inspector General for the Justice Department investigated the allegations relating to Vice President Gore as part of a review of other allegations concerning the Prince/Rap-A-Lot matter. The Inspector General issued a report on March 9, 2001, which concluded: "We found no evidence to support the allegation that Vice President Gore was involved in any action relating to the DEA investigation of Prince."[127]

Citations

1. The minority staff of the Government Reform Committee estimates that the costs of the congressional campaign finance investigations alone have exceeded $23 million. This figure includes $8.7 million that a 1998 General Accounting Office report found federal agencies reported spending on responding to congressional inquiries on campaign finance matters; over $8 million that the House Government Reform Committee has spent on its campaign finance investigation; $3.5 million that the Senate Governmental Affairs Committee spent on its campaign finance investigation; $1.2 million authorized for the House Committee on Education and the Workforce's investigation of allegations of campaign finance abuses concerning the Teamsters; and $2.5 million authorized for a select committee that investigated allegations that the Clinton Administration gave missile technology to China in exchange for campaign contributions. *See GAO Survey of Executive Branch Cost to Respond to Congressional Campaign Finance Inquiries* (June 23, 1998); House Committee on Government Reform and Oversight, *Interim Report: Investigation of Political Fundraising Improprieties and Possible Violations of Law, Additional and Minority Views,* 105th Cong, 3968-69 (1998) (H. Rept. 105-829). When the costs of investigating allegations in addition to the campaign finance allegations are included, the total costs likely significantly exceed $23 million. Many of these additional investigations involved substantial congressional resources as well as executive branch resources to respond to inquiries. For example, to investigate allegations concerning the government's actions at Waco, Texas, the House Government Reform Committee has conducted at least 82 interviews, and has received over 750,000 pages of documents from the Justice Department and the Defense Department in response to Committee requests.

2. CBS, *CBS Morning News* (Oct. 20, 1997).

3. CBS, *CBS This Morning* (Oct. 20, 1997).

4. NBC, *NBC News At Sunrise* (Oct. 20, 1997).

5. NBC, *Today* (Oct. 20, 1997).

6. ABC, *ABC World News Sunday* (Oct. 19, 1997).

7. CNN, *CNN Early Prime* (Oct. 19, 1997).

8. CNN, *CNN Morning News* (Oct. 20, 1997).

9. CNN, *Headline News* (Oct. 20, 1997).

10. CNN, *Early Edition* (Oct. 20, 1997).

11. Fox, *Fox Morning News* (Oct. 20, 1997).

12. Fox, *Fox News Now/Fox In Depth* (Oct. 20, 1997).

13. *Tapes May Have Been Altered, Rep. Burton Says; Clinton Aide Decries Chairman's 'Innuendo'* (Oct. 20, 1997).

14. *GOP Suggests Tapes Altered* (Oct. 20, 1997).

15. *GOP Suspects White House Altered Fund-raising Tapes* (Oct. 20, 1997).

16. *Panel May Use Lip Readers to Check Fund-raising Tapes* (Oct. 20, 1997).

17. *Tape-Tampering Denied* (Oct. 21, 1997).

18. Senator Thompson announced these findings on NBC's *Meet the Press* (Dec. 7, 1997). Only a handful of media outlets reported this announcement, and these reports focused on other campaign finance issues and mentioned the Thompson announcement only at the very end of the accounts. *E.g., Reno and Freeh to Testify, Morning Edition*, National Public Radio (Dec. 9, 1997) (reporting on the upcoming House Government Reform and Oversight Committee hearing on the independent counsel decision and noting Senator Thompson's announcement at the very end). Beyond coverage of Senator Thompson's announcement, one article reported that Paul Ginsburg, a technical expert hired by the Senate Governmental Affairs Committee, had found no signs of doctoring. *See Expert: Coffee Tapes Are Clean*, Newsday (Nov. 8, 1997), and the "Real Deal" segment at the end of *Face the Nation* on November 2, 1997, followed up on Rep. Burton's allegation to report that Mr. Ginsburg was going to report that there was no doctoring.

19. *See, e.g.*, Congressional Record, H5632 (July 13, 1994)

20. Office of Independent Counsel, *Report on the Death of Vincent W. Foster, Jr. (In Re: Madison Guaranty Savings & Loan Association)*, 5 (Oct. 10, 1997) (citing Federal News Service (Aug. 10, 1993)).

21. *Id.* at 7 (citing *Report of the Independent Counsel Robert B. Fiske, Jr., In Re: Vincent W. Foster, Jr.*, at 58).

22. *Id.* at 111.

23. *Former Clinton Aide Faces Questions on Memo; Document Suggests that First Lady Was Behind Firings in Travel Office*, Milwaukee Journal Sentinel (Jan. 6, 1996).

24. House Committee on Government Reform and Oversight, *Hearing, White House Travel Office – Day Three*, 104th Cong., 111 (Jan. 24, 1996).

25. Press Release, Office of the Independent Counsel (June 22, 2000).

26. Congressional Record, H6633 (June 20, 1996).

27. House Committee on Government Reform and Oversight, *Investigation of the White House and Department of Justice on Security of FBI Background Investigation Files*, 104th Cong., 16 (1996) (H. Rept. 104-862).

28. Office of Independent Counsel, *Report of the Independent Counsel (In Re: Madison Guaranty Savings and Loan Association) In Re: Anthony Marceca*, 7-8 (March 16, 2000).

29. CNN, *Late Edition with Frank Sesno* (Feb. 16, 1997).

30. Congressional Record, H4097 (June 20, 1997).

31. *See Senate Panel Is Briefed on China Probe Figure; Officials Say Evidence May Link L.A. Businessman to Election Plan*, Washington Post (Sept. 12, 1997).

32. *E.g.*, CBS Evening News (June 11, 1997); *Huang Leaked Secrets, GOP Lawmaker Says,* Los Angeles Times (June 13, 1997); *Republican Lawmaker Alleges Huang Passed Secrets: Communications with Lippo Group Questioned,* Baltimore Sun (June 13, 1997); *Congressman Says Evidence Confirms Huang Passed Secrets – The House Rules Chairman Says Information Was Given to the Lippo Group,* Fort Worth Star-Telegram (June 13, 1997); *Huang Gave Classified Data to Lippo, Lawmaker Claims,* Austin American-Statesman (June 13, 1997); *Huang Accused of 'Economic Espionage,'* Cincinnati Enquirer (June 13, 1997); *Legislator Alleges Fund-raiser Gave Classified Data to Overseas Company*, Las Vegas Review-Journal (June 13, 1997); *Dem Donor 'Breached Security' Lawmaker Accuses Ex-Clinton Appointee,* Arizona Republic (June 13, 1997); *Congressman Alleges Huang Passed Secret Data to Firm; White House, FBI Decline to Comment on Solomon's Remarks,* Milwaukee Journal Sentinel (June 13, 1997).

33. Gerald Solomon Interview FD-302 at 1 (Aug. 28, 1997).

34. Gerald Solomon Interview FD-302 at 1 (Feb. 11, 1998).

35. CNN, *Inside Politics* (Aug. 27, 1997).

36. *GOP Lawmaker Seeks Counsel to Probe O'Leary-Chung Tie,* Buffalo News (Aug. 22, 1997).

37. Notification to the Court Pursuant to 28 U.S.C. §592 (b) of Results of Preliminary Investigation (Dec. 2, 1997).

38. *Id.* The House Government Reform and Oversight Committee also discovered that fact. The Committee deposed several individuals, including Secretary O'Leary, to investigate the allegation by Mr. Chung regarding Secretary O'Leary. The Committee scheduled a hearing on the matter, but, upon discovering the allegation was false, canceled the hearing.

39. NBC's *Meet the Press* (Sept. 14, 1997).

40. *White House Denies Role in Audit of Jones; IRS Has History of Targeting 'Enemies,'* Washington Times (Sept. 16, 1997).

41. *E.g., Whistleblowers' Letter, Newspapers Alert Agency,* Washington Times (Sept. 29, 1997); *Conservatives Suspect IRS Audit Is Price of Opposing Clinton Policies,* Washington Times (Apr.

21, 1997); *Politics and the IRS,* Wall Street Journal (Jan. 9, 1997).

42. Staff of the Joint Committee on Taxation, *Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters* (March 2000).

43. *Id.* at 7.

44. House Committee on Government Reform and Oversight, *Hearings on Conduit Payments to the Democratic National Committee,* 105th Cong., 7 (Oct. 9, 1997) (H. Rept. 105-51).

45. *Id.* at 257, 271.

46. Minority Staff Report, House Committee on Government Reform and Oversight, *Evidence that John Huang Was in New York City on August 15, 16, 17, and 18* (Oct. 9, 1997).

47. House Committee on Government Reform, *Hearing on the Role of John Huang and the Riady Family in Political Fundraising*, 108 (Dec. 15, 1999) (stenographic record).

48. House Committee on Government Reform, *Hearing on the Role of Yah Lin "Charlie" Trie in Illegal Political Fundraising*, 250-52 (March 1, 2000) (stenographic record).

49. House Committee on Government Reform and Oversight, *Hearings on Campaign Finance Improprieties and Possible Violations of Law*, 105th Cong., 11-12 (Oct. 8, 1997) (H. Rept. 105-50).

50. Proffer of Nora and Gene Lum to the Committee on Government Reform and Oversight (Aug. 22, 1997).

51. *E.g., Story of a Foreign Donor's Deal With '92 Clinton Camp Outlined*, Washington Post (Oct. 9, 1997); *House Panel to Hear of '92 Clinton Donation Problem Probe*, Los Angeles Times (Oct. 9, 1997).

52. Proffer of Nora and Gene Lum, *supra* note 50, at Part B.1-3.

53. Deposition of Richard C. Bertsch, House Committee on Government Reform and Oversight, ex. 12 (March 30, 1998). The letter was addressed to Richard Choi Bertsch, who worked for an organization called the Asian Pacific Advisory Council-VOTE ("APAC") which conducted get-out-the-vote and fund-raising activities in the Asian-American community in California in 1992. *Id.* at 10-13, 20-22.

54. CBS's *Face the Nation* (Oct. 19, 1997).

55. Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns,* 105th Cong., v. 6, 9345-46 (1998) (S. Rept. No. 167); *Meet the Press* (Dec. 7, 1997) (interview with Senator Thompson).

56. Deposition of Joseph Simmons, House Committee on Government Reform and Oversight, 149 (Oct. 18, 1997); Deposition of Alan P. Sullivan, House Committee on Government Reform and Oversight, 37 (Oct. 17, 1997); Deposition of Steven Smith, House Committee on Government Reform and Oversight, 99 (Oct. 18, 1997).

57. The conservative publication *Insight* magazine reported that "dozens of big-time political donors or friends of the Clintons" had gained waivers of the eligibility rules regarding burials at Arlington National Cemetery. Without naming its sources, the article stated that a "national cemetery official" and other sources are "outraged that the Clinton White House has applied pressure to gain waivers for fat-cat donors." *Is There Nothing Sacred?*, Insight Magazine (dated Dec. 8, 1997, but reportedly released in advance of that date).

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59. Press Release, Rep. Gerald Solomon (Nov. 20, 1997).

60. General Accounting Office, *Arlington National Cemetery: Authority, Process, and Criteria for Burial Waivers*, 2-3, appendix 1 (Jan. 28, 1998) (GAO/T-HEHS-98-81).

61. *Id.* at 1.

62. *Id.* at 9.

63. House Committee on Government Reform and Oversight, *Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Application*, 105th Cong., v.1, 106, 340 (Jan. 28, 1998).

64. Office of Independent Counsel, *Final Report of Independent Counsel In Re: Bruce Edward Babbitt*, 430, 441 (Aug. 22, 2000).

65. *Burton's Pursuit of President*, Indianapolis Star (Apr. 16, 1998).

66. Congressional Record, H4545 (June 11, 1998).

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68. House Committee on Government Reform and Oversight, *Investigation of Political Fundraising Improprieties and Possible Violations of Law,* 105th Cong, 3978 (1998) (H. Rept. 105-829).

69. Letter from Rep. Henry Waxman to Chairman Dan Burton (May 3, 1998).

70. *Bridling G.O.P. Leader Says Tapes Speak for Themselves*, New York Times (May 5, 1998); *Burton Defends Hubbell Transcript Actions*, Washington Post (May 5, 1998).

71. *Opening Statement by Chairman Burton*, House Committee on Government Reform and Oversight, Business Meeting, 6-13 (Apr. 23, 1998); Congressional Record, H2338 (Apr. 28, 1998); Congressional Record, H2444 (Apr. 29, 1998).

72. Congressional Record, H2336 (Apr. 28, 1998).

73. Congressional Record, H3453 (May 19, 1998).

74. House Committee on Government Reform and Oversight, Business Meeting, 87 (Apr. 23, 1998) (stenographic record).

75. Deposition of Larry Wong, House Committee on Government Reform and Oversight, 13-14, 19, 26-27, 43, 52, 57 (July 27, 1998).

76. *Id.* at 85.

77. Congressional Record, H3239 (May 13, 1998).

78. *GOP Breaking China Over Clinton's Deals,* National Journal (May 23, 1998).

79. *See Internal Justice Memo Excuses Loral*, Los Angeles Times (May 23, 2000).

80. Memorandum from Lee Radek to James Robinson, Assistant Attorney General, Criminal Division (Aug. 5, 1998).

81. The Addendum to Interim Report for Janet Reno and Louis Freeh Prepared by Charles La Bella and James DeSarno (Aug. 12, 1998).

82. House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, 105th Cong., 2nd Sess. (Committed to the Committee of the Whole House, Jan. 3, 1999; Declassified in Part, May 25, 1999) (H. Rept. 105-851).

83. Letter from Rep. David McIntosh to Attorney General Janet Reno (Sept. 17, 1998).

84. *Database Criminal Probe Sought,* Washington Post (Sept. 9, 1998).

85. Letter from Rep. David McIntosh to Attorney General Janet Reno (Sept. 17, 1998); House Committee on Government Reform and Oversight, *Investigation of the Conversion of the $1.7 Million Centralized White House Computer System, Known as the White House Database, and Related Matters*, 105th Cong., 574-581 (Oct. 30, 1998) (H. Rept. 105-828).

86. Letter from M. Faith Burton, Special Counsel to the Assistant Attorney General, to Rep. David McIntosh (May 6, 1999).

87. House Committee on Government Reform and Oversight, *Investigation of the Conversion of the $1.7 Million Centralized White House Computer System, Known as the White House Database, and Related Matters*, 105th Cong., 1-6, 33-44 (Oct. 30, 1998) (H. Rept. 105-828).

88. *Id.*, Minority Views, 564-68.

89. Letter from Chairman Dan Burton to Attorney General Janet Reno (March 22, 1999).

90. *Id.*

91. Charles Duncan's Responses to Interrogatories (Apr. 20, 1998).

92. Letter from Chairman Dan Burton to Attorney General Janet Reno, *supra* note 89.

93. Statement of Steven C. Clemons (Feb. 25, 1998); Letter from Rep. Henry A. Waxman to Attorney General Janet Reno (Apr. 13, 1999).

94. Statement of Alan Gershel, Deputy Assistant Attorney General, Department of Justice, House Committee on Government Reform, *Hearing on Contacts between Northrop Grumman Corporation and the White House Regarding Missing White House E-Mails* (Sept. 26, 2000).

95. Press Release, Chairman Dan Burton, *Burton Angered by Harassment of Witness* (June 29, 1999).

96. Letter from Rep. Henry Waxman to Chairman Dan Burton (July 15, 1999).

97. Testimony of Chairman Dan Burton, House Rules Committee (July 15, 1999) (available at www.house.gov/reform/oversight/99_07_15db-rules.htm).

98. *See* Letter from Russell J. Bruemmer, Wilmer, Cutler & Pickering, to Richard L. Huff, Co-Director, Office of Information and Privacy, Department of Justice (March 31, 1995).

99. Letter from Wallace H. Cheney, Assistant Director/General Counsel, Federal Bureau of Prisons, to Joseph M. Gabriel, Law Offices of Langberg, Leslie and Gabriel (March 2, 1995); Letter from Donnie L. Gay, Attorney-in-Charge, FOIA/PA Unit, Executive Office of United States Attorneys, Department of Justice, to Joseph M. Gabriel (Dec. 15, 1994); *See* Letter from Magda S. Ortiz, FOIA/PA Reviewing Officer, Immigration and Naturalization Service, to Rebekah Poston (Dec. 6, 1994) (explaining that a potentially responsive record was illegible and requesting additional information); Letter from Russell J. Bruemmer, Wilmer, Cutler & Pickering, to Richard L. Huff, Co-Director, Office of Information and Privacy, Department of Justice (March 31, 1995) (explaining that the INS searched for, but ultimately could not find, a record responsive to the FOIA request).

100. Testimony of Richard Huff and Rebekah Poston, House Government Reform Committee, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department*, 129-31 (July 27, 2000) (stenographic record).

101. Testimony of John Schmidt and John Hogan, House Committee on Government Reform, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department*, 120-23, 128, 140-41 (July 27, 2000) (stenographic record).

102. Memorandum from Attorney General Janet Reno to Staff of the Attorney General (Apr. 28, 1995).

103. House Committee on Government Reform, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department,* 154 (July 27, 2000) (stenographic record).

104. *Morning Edition*, National Public Radio (Aug. 31, 1999).

105. Letter from Chairman Burton to Attorney General Janet Reno (Sept. 10, 1999).

106. Fox News, *Fox News Sunday* (Sept. 12, 1999).

107. Letter from Rep. Henry Waxman to John Danforth, Special Counsel (Sept. 13, 1999); FBI FD-302 of FBI Agent (June 9, 1993) (reporting that a pilot heard "a high volume of [Hostage Rescue Team] traffic and Sniper [Tactical Operations Command] instructions regarding . . . the insertion of gas by ground units," including "one conversation, relative to utilization of some sort of military round to be used on a concrete bunker"); FBI H.R.T. Interview Schedule (Nov. 9, 1993) (summarizing an interview with an FBI agent and stating that "smoke on film came from attempt to penetrate bunker w/1 military and 2 ferret rounds" and further describing the military round as "Military was . . . bubblehead w /green base"); Handwritten notes (April 19, 1993) (making repeated references to military rounds fired on April 19, 1993, such as "smoke from bunker came when these guys tried to shoot gas into the bunker (military gas round)").

108. John C. Danforth, Special Counsel, *Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas*, 54 (July 21, 2000).

109. MSNBC, *Watch It! With Laura Ingraham* (Nov. 2, 1999).

110. John Huang Interview FD-302 at 19 (Jan. 19 - Feb. 10, 1999).

111. John Huang Interview FD-302 at 129 (Feb. 23 - March 26, 1999).

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113. *Id.* at 95.

114. House Committee on Government Reform, *Hearings on the Role of John Huang and the Riady Family in Political Fundraising,* 15-16 (Dec. 15, 1999) (stenographic record).

115. Press Release, Chairman Dan Burton, *Judge Norma Holloway Johnson Refuses to Testify Before Committee* (May 11, 2000).

116. Washington Post, *Judge Is Cleared of Impropriety; No Political Motive Found in Assignment of Sensitive Cases* (Feb. 27, 2001).

117. Letter from Chairman Dan Burton to Attorney General Janet Reno, 2 (July 18, 2000).

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123. *Id.*

124. *Panel Probes if Gore Blocked Drug Case*, Washington Times (Nov. 25, 2000).

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Exhibit 2

March 15, 2001

The Honorable Dan Burton
Chairman
House Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Burton:

I am writing to inquire about the status of the Committee's investigation of the Marc Rich pardon and other pardons by President Clinton.

As I'm sure you know, several Republican leaders have indicated publicly that the congressional investigations are drawing to a close. In an interview broadcast on CNN on March 10, House Speaker Dennis Hastert discussed the pardons investigation, stating, "I think, probably from my point of view, about all that information (that) is going to come out, has come out," and "I think this is kind of winding down on its own." With respect to the congressional pardon probes, Senate Majority Leader Trent Lott also stated last week, "I'd be inclined to move on." Similarly, the *Associated Press* last week quoted "a high-ranking Republican aide," who stated, "There is a collective sense that the [Government Reform Committee] has gone about as far as it can."

Despite these comments, your investigation now appears to be escalating and moving beyond the Marc Rich matter to other pardons President Clinton issued. To date, as part of the Committee's pardons investigation, you have issued 56 letters requesting documents and information regarding 229 people. These include numerous requests in the past few days. On March 8 and 9, for example, you requested information from former Isreali Prime Minister Ehud Barak, issued a broad request to the National Archives for records relating to 22 individuals, and requested interviews with two other individuals. You have also issued three subpoenas since the Committee's March 1 hearing, including subpoenas for the phone records of Denise Rich, Beth Dozoretz, and Ron Dozoretz. And yesterday my staff received notice that you intend to subpoena records from Roger Clinton.

Moreover, Committee staff conducted an interview on Monday regarding the pardons matter, on Tuesday you requested interviews with Tony Rodham, Hugh Rodham, and Roger Clinton, and several other interviews are scheduled for next week. The Committee has also received over 6,500 pages of documents to date in response to its requests, with many additional documents due.

The Committee's investigation appears to involve a broad range of Clinton pardons. For example, in addition to the Marc Rich pardon, the Committee is seeking information relating to the clemency decisions concerning Almon Braswell, Carlos Vignali, Harvey Weinig, Edgar Gregory, and Vonna Jo Gregory. In addition, the Committee is seeking information regarding consideration of clemency for Eugene Lum, Nora Lum, and individuals for whom Roger Clinton may have advocated, among many others.

Given the statements Speaker Hastert made about "winding down" the House investigation, I am sure you can understand why your new round of information requests and subpoenas is creating confusion. It would be most helpful to know whether the Speaker's comments were accurate or whether you are planning to devote significant additional resources to investigating pardons and other clemency decisions.

If the investigation is going to continue, I believe it would be sensible for our Committee to adopt a suggestion proposed in a March 12 *USA Today* editorial. Since the U.S. Attorney's office in New York is now conducting a criminal investigation into all of the pardons and other clemency orders President Clinton issued, it would be unnecessary and a waste of taxpayer dollars for our Committee to duplicate that work.

A better course, as *USA Today* suggested, would be to leave the criminal investigation to the U.S. Attorney's office and focus our Committee on a broad examination of how the pardon system has worked in different administrations. To do this fairly and comprehensively, we would need to scrutinize questionable pardons issued in the past, including former President Bush's pardons of Armand Hammer, Caspar Weinberger, and Aslam Adam, as well as the role played by Florida Governor Jeb Bush in successfully lobbying for Orlando Bosch's release from jail by the former Bush Administration.

This approach has the benefit of being even-handed and nonpartisan in scope, avoiding duplication with the U.S. Attorney's office, and providing an opportunity for valuable insights and possible improvements into the pardon process.

I am including the *USA Today* editorial for your convenience, and look forward to learning your thoughts on how you intend to proceed with the investigation.

Sincerely,

Henry A. Waxman
Ranking Minority Member

cc: Members of the House Committee on Government Reform

"USA TODAY hopes to serve as a forum for better understanding and unity to help make the USA truly one nation."
—Allen H. Neuharth, Founder, Sept. 15, 1982

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Narrow pardon probe ignores needed reforms

Our view:

Clinton wasn't the first president to exploit loopholes in the process.

After four congressional hearings, testimony by 20 witnesses and a torrent of disclosures from internal White House e-mails, Congress' probe of President Clinton's pardons is drawing to a close with a shrug: "I think this is kind of winding down on its own," House Speaker Dennis Hastert, R-Ill., said in a CNN interview Saturday.

The brusque ending comes with no clear findings of what's wrong with the pardon system and few proposals on how to fix it: an unsatisfying finish to an unsavory meal.

The much-watched House Government Reform Committee hearings served up more evidence of Clinton's lack of standards in bestowing undeserved mercy on well-connected felons and fugitives. Yet, the committee run by Rep. Dan Burton, R-Ind., refused to look deeper, for instance, into questionable pardons of past presidents, including Ronald Reagan and George Bush, that might provide insight into the system.

As for potential criminality, U.S. Attorney Mary Jo White of New York already is investigating the most troubling pardons and is best equipped to ferret out wrongdoing.

Left unresolved, though, are several troubling issues in the pardon process:

▸ **Secrecy.** In 1934, the Justice Department stopped providing annual reports of even the most basic pardon information, such as the names and offenses of those pardoned. And unlike other federal lobbyists, pardon lobbyists, whether influential lawyers or presidential relatives, aren't required to register publicly. The lack of transparency allows influence peddling and obscures information that could reveal problems.

▸ **Disorder.** Former president Bush granted a flurry of pardons, several controversial, in his final days in office. And Clinton broke all modern records by granting 140 pardons in his final chaotic hours — too late to fear any electoral price. Such last-minute actions hamper voter scrutiny.

▸ **Diffuse authority.** The Justice Department's authority to recommend for or against pardons once rested with the attorney. And presidents are free to grant pardons outside the Justice Department process, as Clinton did on a grand scale. The lack of a high-profile gatekeeper leaves the system vulnerable to abuse.

Congress can't do much about this. Under the Constitution, the president's pardon power is absolute, and as a fail-safe in the criminal justice system, it should remain so. Short of an ill-advised constitutional amendment, there is no way to guarantee against a repeat of the Clinton pardon fiasco.

But Congress and future presidents could go a long way toward improving the process. Opening the system with public reporting would be a beneficial step toward scuttling unjustifiable pardons, such as Marc Rich's. So, too, would reporting requirements for pardon lobbyists, as called for by Sen. Arlen Specter, R-Pa. Disclosure might dissuade a president's brother-in-law from accepting $400,000 to seek pardons for a convicted drug smuggler and a convicted swindler.

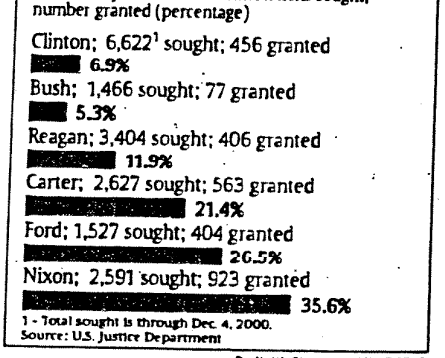
President Bush could also vest the power to review pardon applications in the attorney general, make clear they must undergo Justice Department review and promise not to grant any pardons in the final six months of his term.

It would be easy to churn more political theater from Clinton's unpardonable misuse

Pardon pleas rise

Presidents have used their powers to grant pardons and commute sentences in vastly different ways, but it appears that as the number of pardon applications has risen sharply, the percentage of grants has generally fallen.

President; pardons and commutations sought; number granted (percentage)



1 - Total sought is through Dec. 4, 2000.
Source: U.S. Justice Department

By Keith Simmons, USA TODAY

Exhibit 3

ALAN M. DERSHOWITZ
1575 MASSACHUSETTS AVENUE
CAMBRIDGE • MASSACHUSETTS • 02138

VIA FACSIMILE

January 25, 2001

Mr. Mike Tirone
Producer
"Hardball with Chris Matthews"
One MSNBC Plaza
Secaucus, NJ 07094

Dear Mr. Tirone:

I want to register strong disapproval about last night's show and the manner in which I was treated. I want to make it clear that my anger is not directed personally at you, but at the show in general.

You will recall that you asked me to be on the show to defend President Clinton's decision to grant pardon to Mark Rich. I told you that I was familiar with the case, since I had consulted with his legal team in the early 1990s. At first, you told me that I would be on opposite Rudy Giuliani (whose office indicted Rich), and later you told me I would be on opposite Robert Reich, who was strongly opposed to the pardon. You then called to say that the entire segment would be off the air because of President Bush's meeting with Senator John McCain. After discussing the case further with me, you decided that it was essential to have the matter aired that night and to present both sides. You arranged for me to be on the top of the show opposite an opponent of the pardon. The car was literally downstairs at 4:20 p.m. when you called to tell me that the McCain-Bush meeting had required you to cancel the segment altogether.

I was shocked to turn on the show and watch an extensive discussion of the Mark Rich pardon, with three guests plus the host strongly opposing it – indeed, mocking it – without anyone presenting the other point of view. This is irresponsible television. It is irresponsible politics. It is irresponsible as a matter of plain, ordinary decency. There are two sides to this issue, as there are to most. You owe it to your viewers to present both sides. I was prepared to present a very strong, factual defense of the pardon and of Mark Rich's innocence. I told you about two prominent tax lawyers, one a professor who had written memoranda indicating that what Mr. Rich had done did not constitute

a crime. That story broke in this morning's *New York Times;* it could have broken last night on your show. I was also prepared to explain why the word "fugitive" did not quite fit Mr. Rich's status.

Let me add that I have had no contact with Mr. Rich or with anyone on his defense team for many years. I was prepared to defend the merits of his claim because I believe it is just. I was also prepared to argue that the President was right in not seeking the approval of the Justice Department for pardons. The Justice Department is an adversarial relationship to the granting of pardons, since they have prosecuted these cases and rarely, if ever, see any virtue on the other side. This is a presidential decision, not a Justice Department decision, and I believe that President Clinton did the right thing.

This is a serious matter because your show is justly influential and widely watched. I really think you should reconsider your frequent policy of presenting only one side of a controversial issue.

Sincerely,

Alan M. Dershowitz

AMD/mjl

cc: Chris Matthews

Exhibit 4

ELAINE J. MITTLEMAN
ATTORNEY AT LAW
2040 ARCH DRIVE
FALLS CHURCH, VIRGINIA 22043

TELEPHONE (703) 734-0482
FAX (703) 734-0482

ADMITTED IN D.C., NOT ADMITTED IN VIRGINIA

April 3, 2002

The Honorable Dan Burton
Chairman
House Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Marie Ragghianti's Response to the Report about Presidential Pardons, "Justice Undone: Clemency Decisions in the Clinton White House"

Dear Representative Burton:

I am writing to present Marie Ragghianti's response to the Report prepared by the House Committee on Government Reform, "Justice Undone: Clemency Decisions in the Clinton White House." Ms. Ragghianti, who formerly was Chief of Staff of the United States Parole Commission, is concerned with Chapter Two, "Roger Clinton's Involvement in Lobbying for Executive Clemency."

The Executive Summary of the Report includes the following finding:

Roger Clinton lobbied for the release from prison of Rosario Gambino, a notorious heroin dealer and organized crime figure.

...

- *Roger Clinton attempted to use his relationship to the President to influence the decisionmaking of the United States Parole Commission ("USPC").* Roger Clinton lobbied the Parole Commission to grant parole to Gambino. While lobbying Parole Commission staff, Roger Clinton informed them that President Clinton was aware of his efforts on behalf of Rosario Gambino and that the President had suggested that he contact the Parole Commission members directly. Although the Commission staff tried to insulate the Commissioners from undue influence, Roger Clinton clearly attempted to use his relationship to the President to influence the Commission improperly and win Gambino's release.

- *The Chief of Staff of the Parole Commission hindered the FBI's investigation.* In 1998, the FBI began investigating Roger Clinton's contacts with the Parole Commission. However, it met resistance from Marie Ragghianti, the Chief of Staff of the Parole Commission. Ragghianti, who had participated in meetings

with Roger Clinton on the Gambino case, objected to the FBI investigation and successfully halted an FBI plan to have an undercover agent meet with Clinton posing as a Parole Commission staffer. She also attempted to keep the FBI from recording a meeting between Roger Clinton and a Parole Commission staffer. Ragghianti's efforts may have kept the FBI from reaching a full understanding of Roger Clinton's involvement in the Gambino case.

Ms. Ragghianti takes strong exception to the conclusion that she hindered the FBI's investigation of Roger Clinton. The implication of that conclusion is that Ms. Ragghianti was acting inappropriately in her position as Chief of Staff of the United States Parole Commission. In fact, Ms. Ragghianti worked diligently to serve the interests of the Parole Commission, which was her responsibility.

The conclusions concerning Ms. Ragghianti are based on a number of wrongful assumptions and misperceptions. In addition, this Report appears to bolster its findings through reliance upon subjective interpretations and incomplete information. This letter will address those matters. However, in light of the detailed nature of the report, it is not possible to rebut every misleading statement.

The subjective nature of the conclusions leads to a greater problem with the Report. Ms. Ragghianti was not advised that her actions were under investigation. She met with the Committee in an attempt to be helpful and provide information. If she were under investigation for possibly hindering an FBI investigation, she should have been so advised. If she had been so notified, she could have brought counsel to the interview to advise her and would certainly have provided the Committee with her own notes on this matter. In addition, she should have had the opportunity to comment on this report before it became final.

I. The Report assumes that it is improper and unusual for private citizens to contact the Parole Commission. The Report further assumes that it is improper and unusual for Commission staffers to have conversations with private citizens.

The fundamental premise of the concerns that Roger Clinton was lobbying the Parole Commission appears to be that contact by a private citizen (such as Clinton) is improper and unusual. To the contrary, staff members at the Parole Commission receive frequent inquiries and spend time in answering the public's questions about Parole Commission procedures. The Privacy Act precludes Commission staffers from revealing information from individual files except to authorized representatives of the inmate.

Roger Clinton contacted the Parole Commission on a number of occasions. In a January 30, 1996, conversation with Clinton, the Commission's General Counsel, Michael A. Stover, advised Clinton that Commissioner Michael J. Gaines could not meet with him

and that the Commissioners' decisionmaking process operated like a court of law. Report at Ch. Two, p. 36. (Note: Ragghianti did not join the Commission until August 1997.)

Clinton next approached the Parole Commission in December 1997, when he contacted Chairman Gaines. After being contacted, Gaines advised Chief of Staff Ragghianti that Clinton had contacted him and that Gaines thought that he should not meet with Clinton. Gaines requested that Ragghianti meet with Clinton and to treat him the way she would "anyone else." Rpt. at Ch. 2, p. 38. Gaines explained to the House Committee on Government Reform staff that he asked Ragghianti, rather than General Counsel Stover, to handle these matters, because she was Chief of Staff and answered directly to him. Rpt. at Ch. Two, p. 39. Gaines also advised the Committee staff that he did not remember Stover advising against having the meeting with Clinton or of any effort to prevent the meeting. Rpt. at Ch. Two, p. 39, n. 229. (Note: Chief of Staff Ragghianti was General Counsel Stover's superior.)

After the meeting with Chairman Gaines, Ragghianti scheduled a meeting with Clinton for December 23, 1997. She asked Tom Kowalski, Director of Case Operations, to join her in the meeting.

General Counsel Stover learned of the planned meeting from Kowalski. Stover told the Committee staff that he then advised Gaines that it was not prudent to meet with a man who had previously attempted to use political influence in an improper way. Stover indicated that Gaines responded that Gaines believed Clinton should be treated with the same courtesy as any other member of the public. As noted above, Gaines indicated that he does not recall Stover advising against the meeting. Stover also told the Committee staff that he gave Ragghianti a copy of his January 1996 memorandum (attached hereto as Exhibit 1) about his conversation with Clinton. Ragghianti told the Committee staff that she did not receive a copy of the Stover memo before her meeting with Clinton. Rpt. at Ch. Two, p. 39.

The Report includes no memoranda or other documentation indicating that Stover advised Ragghianti that she should not meet with Clinton. Moreover, Stover's January 1996 memorandum to the file stated at p. 2 that "Although Roger Clinton is a member of the public who has the right to communicate his views to the Parole Commission, the Commission should not allow the fairness of its deliberations to be placed in doubt through inclusion in the record of any communication that gratuitously introduces the factor of a potential political influence into the case. My preference is for the Commission to vote a decision based only on the facts of the Gambino case, and without reference to this episode." In fact, as the record shows, this is precisely what happened. Ragghianti saw to it that all Commission protocols and legal mandates were strictly followed, from beginning to end, in the Gambino matter.

Stover's memorandum to the file apparently distinguished between Clinton's communicating his views to the Parole Commission and inclusion of information about the Clinton contact in the file used to make parole decisions. Stover's concern was that the

file used to make decisions not be prejudiced in any way by potential political influence, which apparently could occur if Clinton were mentioned in the file. Stover's memorandum does not state that Clinton is not allowed to contact the Commission or that the staff members (not Commissioners) should not meet with Clinton.

The Report does not describe the Parole Commission procedures concerning communication with the Commission. The Commission's Procedures Manual (excerpts attached hereto as Exhibit 2) sets out the procedures at § 2.22, titled "Communication with the Commission." Section 2.22-04, titled "Requirement for Written Record of Telephone Calls," provides that the general content of all telephone calls relative to a prisoner should be part of the written record. Section 2.22-05, titled "Personal Visits," provides that visits to the Commission's Office are to be summarized for the file in all cases. All personal visits are to be made upon written requests where possible and will be handled by the appropriate analyst. "Walk in" visits will be referred initially to an analyst. No examiner should grant a personal interview to a visitor regarding a prisoner unless authorized by a Commissioner.

These regulations make it clear that the Commission anticipates receiving telephone calls and personal visits in the course of its regular business. Moreover, summaries of the telephone calls and visits are to be a part of the written record. These regulations appear to contradict Stover's suggestion that information about Clinton's contacts with the Commission should not be included in the written record. (The written record, however, is to be distinguished from the record provided hearing examiners for decision-making purposes, which may include only material germane to decision-making.)

The Report assumes that it is improper and unusual for private citizens to contact the Parole Commission. The Report further assumes that it is improper and unusual for Commission staffers to have conversations with private citizens. These assumptions support the further assumption that the fact that Roger Clinton contacted the Commission and that Commission staffers met with him was inherently problematic. However, the Commission's Procedures expressly provide for communication with the Commission by private individuals. Moreover, if Commission staffers were prohibited from meeting with Clinton, then presumably Stover should have advised of that prohibition, preferably in writing.

Ragghianti met with Clinton at the direction of Chairman Gaines. She was not advised by Stover that she should not meet with Clinton. She was performing her job in a responsible manner when she met with Clinton and any assumption that the meeting was improper is incorrect.

II. The Report assumes that Ragghianti gave special treatment to Roger Clinton.

In describing Ragghianti's treatment of Clinton, the Report states that:

> While Gaines asked Ragghianti to extend only common courtesy to Clinton and treat him like any other member of the public, it is clear that from the outset, Ragghianti treated Roger Clinton like a celebrity and gave him access that she never would have afforded a member of the general public.

Rpt. at Ch. Two, p. 39.

This statement is plainly subjective and conclusory. Ragghianti has given her telephone number to numerous other people. (Ragghianti's telephone number has always been listed, due to her personal philosophy that public officials should be available at all times.) The comment that she treated Clinton like a celebrity is particularly inappropriate. Ragghianti was the subject of a book and a movie starring Sissy Spacek, both titled, "Marie." Rpt. at Ch. Two, p. 38, n. 214. Consequently, Ragghianti is much more accustomed to the "celebrity" culture than many other government employees. It is therefore absurd to assume that Ragghianti would somehow be affected because of contact with a "celebrity" such as Roger Clinton. The Report states that Ragghianti had a "warm approach" to Clinton, but cites nothing in the record to support that description. Rpt. at Ch. Two, p. 40.

The Report implies that Ragghianti and Kowalski had a different impression of the December 23, 1997, meeting with Clinton. The Report cites the memos that Ragghianti and Kowalski wrote about the meeting and states that "rather than being critical of Clinton's approach, Ragghianti appeared sympathetic." Rpt. at Ch. Two, p. 41. This is yet another statement in the Report that is conclusory. Ragghianti noted in her memo that they explained to Clinton that the Commission takes a hard line in matters relating to organized crime. Kowalski noted in his memo that "Ms. Ragghianti and I merely listened throughout the session since we did not have file [sic] nor did Mr. Clinton have a signed release from the subject. He was advised that the case would be reviewed and no further promises were given." Similarly, the Report indicates that Ragghianti thought that Clinton did not try to capitalize on his name, while Kowalski indicated that Clinton mentioned his brother at virtually every meeting. Rpt. at Ch. Two, p. 41. Ragghianti did not find it remarkable that Clinton mentioned his brother; he also frequently mentioned his child.

These memos make it clear that Clinton was not given any special treatment and that nothing improper occurred at the meeting. Whether Clinton was attempting or appeared to be attempting to capitalize on his name does not alter the fact that the Parole Commission gave Clinton no favors. It must be appreciated that Clinton was wholly unsuccessful in his efforts to obtain parole for Gambino.

The Report describes a December 30, 1997, memo by Kowalski that described Gambino's criminal activities. The Report then found that, given the findings about Gambino's activities, "it is disturbing that Ragghianti continued to meet with Clinton and discuss the Gambino case with him." Rpt. at Ch. Two, p. 42. The implication of the Report apparently is that Ragghianti ignored the fact that Gambino had participated in criminal activities. However, Ragghianti met with Clinton at the direction of her superior,

Chairman Gaines. The fact that she met with Clinton does not imply that she was sympathetic to Gambino.

The Report explained that Ragghianti claimed that the Commission had thrown the book at Gambino. Rpt. at Ch. Two, p. 40. Ragghianti had merely stated that she had been told by the staff that the Commission had given Gambino the maximum penalty when they could have given him considerably less time. The implication in the Report is that Ragghianti thought that Gambino had been given too harsh a sentence, when Ragghianti was simply reiterating to the Committee staff what she had been advised by Commission staff about Gambino's sentence. Ragghianti had no independent knowledge of or opinion about the severity of Gambino's sentence. Indeed, Ragghianti deferred at all times to decisions made by Commissioners.

The Report describes additional contacts in 1998 by Clinton with Ragghianti and Kowalski, including a July 1998 meeting. (The Report implies that Ragghianti met repeatedly with Clinton, when in fact, she met with Clinton and Kowalski no more than three times over a period of nine months.) At the July 1998 meeting, Ragghianti and Kowalski did not make substantive comments about Gambino's case, but simply listened to Clinton's concerns. Rpt. at Ch. Two, p. 42-44. The Report indicates that the fact that Ragghianti had a series of contacts with Clinton without advising Stover was troubling. According to the Report, this contact "suggests that she wanted to provide Roger Clinton with an extraordinary measure of access." Rpt. at Ch. Two, p. 45. It needs to be reiterated that Ragghianti was Stover's superior, that she did not report to him, but that she did report to Chairman Gaines, who ordered her to meet with Clinton and be courteous to him.

The Report portrayed Ragghianti's contacts with Clinton as being in contrast with "scrupulously attempting to avoid any appearance of impropriety and follow[ing] Stover's advice." According to the Report, Ragghianti "continued her contacts with Roger Clinton unapologetically and without informing Stover." Rpt. at Ch. Two, p. 45. These comments again reflect the subjective and conclusory nature of the Report. The Report assumes that there was an impropriety in meeting with Clinton. It further assumes that Ragghianti had an obligation to inform (and, apparently, get permission from) Stover about her contacts with Clinton. The Report assumes that Ragghianti's contacts with Clinton, which were done without consulting Stover, indicated that she wanted to give Clinton an "extraordinary measure of access." Rpt. at Ch. Two, p. 45.

The Report does not explain what impropriety existed in Ragghianti's meeting with Clinton and does not establish that Ragghianti was required to advise Stover of her contacts with Clinton. If Stover believed that it was important for him to be advised on ongoing dealings with Clinton, he could have made a written request to Ragghianti. The exhibits apparently include no such request from Stover that he be apprised of Ragghianti's contacts with Clinton.

Moreover, the Report appears to attribute the dispute about contacts with Clinton to being "part of a broader animosity Ragghianti harbored for Stover." Rpt. at Ch. Two, p. 46. Once again, the purported animosity is a subjective conclusion of the Report. This claim of animosity is directed at Ragghianti and ignores Stover's attitude toward Ragghianti. Incredibly, the Report concludes that Stover did not engage in any attacks on Ragghianti, but he did maintain that it was unwise for Ragghianti to engage in a series of contacts with Clinton. Rpt. at Ch. Two, p. 46. This bald conclusion contains no citation to any facts in the record. It implies that Ragghianti engaged in a "series of contacts" with Clinton without describing the actual number of contacts that did occur. The number of times that Clinton may have called Ragghianti's telephone number does not show how many times an actual conversation occurred between Ragghianti and Clinton.

Finally, it is significant that Ragghianti wrote a letter dated October 26, 1998 (attached hereto as Exhibit 3), to Clinton. The letter plainly states that it was written at the request of the Chairman and it advises Clinton that Commission policy restricts the Commission staff from engaging in a series of calls or discussions on official matters. Ragghianti's letter instructed Clinton to write the Commission, if there are any further requests. The Report noted that, during the fall of 1998, Ragghianti and Kowalski did not respond to most of Clinton's calls and that they reported the calls to Stover. Rpt. at Ch. Two, p. 47. Ragghianti did not respond to *any* of Clinton's calls during this time, or subsequently.

The Report's discussion of Ragghianti's contacts with Clinton gives the impression that she gave Clinton special treatment, extended favors to him, had numerous telephone conversations with him and was sympathetic to the merits of Gambino's case. The Report is therefore misleading and obscures the fact that Clinton was not successful in obtaining parole for Gambino. The Report mistakenly assumes that the fact that Ragghianti met with Clinton at the request of Chairman Gaines resulted in special favors being extended to Clinton and Gambino. The Parole Commission's willingness to permit staff to meet with a member of the public (even the President's brother) does not signify the Commission's willingness to bestow special favors on a member of the public (even the President's brother).

III. The Report does not include a description of the scope of the FBI investigation and the position of the Commission about the investigation.

The Report indicates that the FBI sought to review the Parole Commission's file on Gambino in late August 1998. Stover provided the FBI with the documents relating to the Gambino case. Stover stated to the Committee that the original interest of the FBI appeared to be in Gambino, rather than Clinton. On September 11, 1998, Stover informed Ragghianti that the FBI had reviewed the Gambino file at the Commission's office. Rpt. at Ch. Two, p. 44-45. The Report leaves the impression that the time and the identity of the complainant of the initiation of the FBI's investigation of Roger Clinton is still unknown. The Report states that "it appears that Roger Clinton was of investigative interest to the FBI well before this point." Rpt. at Ch. Two, p. 45, n. 280.

The Commission's procedures concerning requests from law enforcement authorities are based on Privacy Act requirements. The head of the agency (or a delegee) should make a written request to the Commission specifying the material desired and the law enforcement activity for which the records are sought. The requester should be specific about the type of information sought and the purpose of the request. Any disclosure to a law enforcement authority must be documented for the file to comply with the accountability requirements of the Privacy Act.

The Report apparently does not include the documentation required by the Privacy Act. It is not clear that the FBI made a written request to the Commission and described the law enforcement activity for which the records were sought. The confusion by the Commission employees as to the purpose of the FBI investigation would seem to indicate that the FBI had not explained the investigation to the Commission.

The Commissioners and staff members presumably should have been advised by the FBI as to whether the investigation was about Gambino or about Clinton. The meeting notes of January 26, 1999 (attached hereto as Exhibit 4), indicate that Commissioner John Simpson asked what was being investigated and for whom. The lack of information is illustrated by the uncertainty as to whether the FBI investigation was being conducted for Ken Starr or for another U.S. Attorney's Office. Rpt. at Ch. Two, p. 52.

In light of the Commission's lack of information about the purpose and origin of the FBI's investigation and the lack of documentation about the subject of the investigation in this Committee's Report, it may be that the Privacy Act requirements have not been met. Specifically, before Stover gave the FBI access to the Parole Commission files, the FBI should have made a written request to the Commission, specifying the material desired and the law enforcement activity for which the records were sought. If this information had been provided, there would not have been such uncertainty as to the scope and purpose of the FBI's investigation.

IV. The Report assumes that an open-ended FBI Investigation of Clinton had been approved by the Parole Commission or that no approval was necessary.

The Report provides no clear documentation about the FBI's advising the Parole Commission as to the scope and purpose of the FBI investigation. Rather, the Report apparently assumes that the FBI could freely use the offices and files of the Commission without any formal approval or oversight by the Commission.

The notes of the meeting with the Commissioners on January 26, 1999, reflect the position of the Commissioners. It is clear that they did not have substantial information about the FBI investigation and, indeed, Commissioner Simpson was pressing to learn what was the FBI investigating and for whom.

Stover advised the Commission (through Sharon Gervasoni, the Deputy Designated Agency Ethics Officer, who attended the meeting) that the decision of Kowalski to participate in an undercover or sting operation run by the FBI was a personal decision for Kowalski to make and was not a Commission decision. FBI Agent Jackie Dalrymple had contacted Kowalski on January 26, 1999 (the day of the meeting), asking whether he would contact Clinton by pager and allow a return call to be taped. Rpt. at Ch. Two, p. 49, 51-52. It is important to appreciate that the FBI proposal discussed at this meeting did not involve Kowalski meeting Clinton in a restaurant. It merely involved taping a call between Clinton and Kowalski.

The Commissioners apparently determined that it was best for Kowalski to make his own decision about cooperating with the FBI. Rpt. at Ch. Two, p. 51-52. This determination was based on the legal advice given by Stover that this decision was a personal one for Kowalski and not a Commission decision. The Commissioners agreed that for the time-being, at least, Commission business was not being interfered with, but left open the possibility of contacting the Deputy Attorney General's Office should that change. Moreover, the Commissioners seemed to lack any substantive information about the investigation, as evidenced by Commissioner Simpson's basic inquiries.

An unsigned note to Ragghianti (attached hereto as Exhibit 5)(from Sharon Gervasoni, the Deputy Designated Agency Ethics Officer) following the January 26, 1999, meeting, described the position of the Commissioners, as follows:

> The Commissioners agreed that, at this point, the FBI's investigation is not interfering with the Commission's ability to conduct its business and left open the possibility of a grievance to the Deputy Attorney General if that were to change.

This note from Gervasoni, which was stapled to the final version of the meeting notes, was written after Ragghianti asked Gervasoni to review notes taken at the meeting with the Commissioners. After reviewing the notes, Gervasoni wrote her note to remind Ragghianti of the Commissioners' wishes that the investigation not interfere with the Commission's normal course of business. The note supports Ragghianti's understanding that the consensus of the Commissioners was to ensure that the Commission could conduct its business without undue or inappropriate interference from the FBI investigation.

V. The Report implies that Ragghianti's actions changed after she became aware of the FBI investigation.

The Report is particularly troubling and misleading in its implication that Ragghianti changed her actions after she became aware of the FBI investigation. The Report discusses the October 26, 1998, letter sent to Clinton by Ragghianti, in which she instructed him to make further contacts in writing. The letter was prepared by Stover and Ragghianti, and signed by Ragghianti. However, the Report credits Stover's comment in

his Committee interview that he considered the letter's language about staff conacts as a victory on that issue. Rpt. at Ch. Two, p. 47. Ragghianti reiterates that it was she who signed the letter, after concurring with Stover on its advice.

The Report then makes the following comment:

> It is curious that before the FBI began its investigation of Clinton and Gambino in September 1998, Ragghianti was strongly in favor of meeting with Clinton, and then, once the FBI began its investigation, she suddenly agreed with Michael Stover's long-standing advice to stop meeting with Clinton.

This narrative is outrageous and clearly subjective and filled with innuendo. Ragghianti had previously met with Clinton at the instruction of Chairman Gaines. In meeting with Clinton, she was carrying out her job responsibilities. Moreover, the Report refers to Stover's "long-standing advice to stop meeting with Clinton," without citing to any documentation supporting the existence of that "advice." The Report implies that Ragghianti had met with Clinton in violation of Stover's advice (once again, making it appear that the meetings were frequent and routine) and does not emphasize that Ragghianti met with Clinton on the instruction of Chairman Gaines. Accordingly, the Report assumes that Stover's advice (which is not memorialized in any legal memorandum or letter) took precedence over the explicit orders of Chairman Gaines.

The statement that Ragghianti "suddenly" agreed with Stover's long-standing advice - after she learned of the FBI investigation of Clinton and Gambino - implies that Ragghianti was trying to hide something or was concerned about appearing suspicious during the investigation. The description of her actions as occurring "suddenly" is filled with innuendo and cites to nothing in the record.

VI. The Report implies that Ragghianti resisted any policy restricting contacts with Clinton.

The Report gives the impression that Stover had fought a diligent battle to restrict agency contacts with Clinton and to establish a policy restricting those contacts. Indeed, the Report describes Stover's comment that the October 26, 1998, letter to Clinton essentially established a policy and that Stover considered that policy a "victory." However, the Report contains no memoranda or documentation supporting Stover's alleged long-standing advice to stop meeting with Clinton. Rpt. at Ch. Two, p. 47. To the extent that the Commission policy had been uncertain or poorly-defined, it would appear that General Counsel Stover should have been advising staff in writing about the need to set such a policy.

The Report minimizes Stover's response to a question as to whether a policy against third party meetings was in fact the practice of the Commission. Stover stated, "Sometimes you state a policy at the moment of its creation." This clarifies that there was a need to establish a more definitive policy than the ones in place at the time (as Stover

admitted), which allowed meetings with the public by Parole Commission staff. However, because there was no adequate published policy, Ragghianti followed the policies that were in place at the time.

The Report omits efforts by Ragghianti to determine or establish Commission policy on contacts with persons such as Clinton. In a memorandum dated September 16, 1998 (attached hereto as Exhibit 6), to Sharon Gervasoni, the Deputy Designated Agency Ethics Officer ("DDAEO"), Ragghianti stated:

> Also, I think this situation makes clear the need for development of some kind of interim protocol for handling sensitive cases or situations which may require weighing the need or rationale for informing (or not informing) the Chairman and/or Commissioners. ...
>
> Additionally, Michael and I have discussed the need for a procedure to identify what kinds of information to include (or exclude) from decision-making files in the future, again in situations similar to this one.

In a 1998 memorandum titled "Running Commentary on Gambino situation" (attached hereto as Exhibit 7), Ragghianti described her contacts with other Commission staffers in an effort to determine the proper handling of the Clinton matter. Ragghianti made the following entry in this memorandum:

> September 17th: Spoke to Michael [Stover] yesterday afternoon (after yesterday's above entry). We agreed that a protocol should be established; also, that he & Sharon [Gervasoni] should issue some kind of memorandum regarding when memoranda should be included in the decisionmaking file of a case, and when they should be placed with the DAEO. We agreed that I should give Sharon copies of Tom's & my memoranda in the Gambino matter.

In a memorandum dated September 23, 1998 (attached hereto as Exhibit 8), Deputy DAEO Gervasoni replied to Ragghianti's request for advice dated September 16, 1998. Gervasoni noted that there was an apparent contradiction between the advice to keep information about Clinton contacts out of the Gambino decisionmaking file and the Commission's Procedures Manual, which states that "visits to the Commission's Office are summarized for the file in all cases." Procedures Manual § 2.22-05. Gervasoni also noted that "Stover is currently working on the advice memorandum you reference."

These memos clearly indicate that Ragghianti was working with other staffers (besides Kowalski and the Chairman), including Stover, to handle a sensitive matter. Further, the memos reflect the uncertainty and shortcomings of the Commission's policies and procedures in determining what should be included in the decisionmaking file about third-party contacts and to what extent the Commissioners or decisionmakers themselves should be made aware of these third-party contacts. As described above, Ragghianti was

instructed by Chairman Gaines to respond to Clinton's inquiries, in part to assure that the Commissioner himself would not be involved. The recurring concern was that the Chairman (and possibly other Commissioners) would have to recuse if they received too much information about the Clinton contacts. The concern was that the Chairman or another Commissioner might lose the ability to vote objectively in the matter.

The Parole Commission denied Gambino's final appeal in April 1999, which meant that Gambino's parole date remained at March 2007. Chairman Gaines did recuse himself from the decision, in light of his involvement in discussions about Clinton's contacts and the FBI investigation. Rpt. at Ch. Two, p. 48-49.

These uncertainties in Commission policy and procedures were certainly not the fault of Ragghianti. In fact, she worked diligently and sought guidance in trying to resolve the conflicts and establish clearer policies and procedures.

VII. The Report assumes that the Parole Commission has a duty to permit the FBI to use Parole Commission resources and employees to conduct undercover or sting operations.

The Report assumes that the FBI investigation should be permitted to take any direction that the FBI chooses. In focusing on the FBI, the Report overlooks that the Parole Commission is a distinct governmental entity, with its own mandate and policies. The Commission must be informed about and consent to any investigation conducted by the FBI that uses Commission resources and employees.

Moreover, it would appear that Stover's advice to the Commissioners - that the decision whether Kowalski should participate in an undercover or sting operation is a personal, rather than a Commission, decision - was incorrect. Kowalski was operating as a Commission employee when he participated in the meeting with Clinton in his office at the FBI's direction.

The Report describes Ragghianti's comment (which was a joke) to Kowalski about a comment made by Clinton on a taped message to Kowalski. The Report surmises that "it is telling that Ragghianti thought Kowalski would need some sort of secret motivation to work with the FBI." Rpt. at Ch. Two, p. 49. This is yet another absurd conclusion by the authors of the Report based on conjecture and misinterpreting a friendly jest between co-workers. Ragghianti herself (as Chairwoman of the Tennessee Board of Pardons and Paroles) had once initiated a federal investigation of pardons and paroles practices in Tennessee in the mid-Seventies. This fact demonstrates that it was unlikely that Ragghianti would object to an employee cooperating with a federal investigation. Although she was not convinced that Clinton had done anything illegal, she respected Kowalski's right to have his own opinion, and at no time did she ever attempt to dissuade him from cooperating with the FBI's investigation.

The Report explains that the FBI (after listening to Clinton's telephone messages to Ragghianti and Kowalski) suggested to Ragghianti that Kowalski could meet with Clinton at a local restaurant. Another person at this meeting would in fact be an undercover FBI agent. Rpt. at Ch. Two, p. 49-50. However, the above-mentioned messages were left in January 1999, following the FBI's initial visits to the Commission - while the FBI's restaurant proposal was made weeks later. Recall that on January 26, 1999, Ragghianti and Deputy DAEO Gervasoni (as already recounted) met with the Chairman and Commissioners to advise them of the investigation and the FBI's request for the Commission to cooperate with them. It was at this meeting that the Commissioners agreed that they would not tell Kowalski what to do (re: the investigation). Recall, too, that as of January 26, the FBI's request of Kowalski was that he contact Clinton by pager and allow a returned call to be taped (no mention of a restaurant sting). This was the meeting (as Gervasoni subsequently reminded Ragghianti) where "(t)he Commissioners also agreed that, at this point, the FBI's investigation is not interfering with the Commission's ability to conduct its business, and left open the possibility of a grievance to the Deputy Attorney General if that were to change."

The Report emphasizes that Ragghianti rejected the proposal to meet at a local restaurant "out of hand" without consulting Chairman Gaines or the rest of the Commission. The Report does not make clear that this proposal was not presented until March 1999. Also, the Report does not make clear that this proposal was the third or fourth revision of a plan to tape record Clinton - and that the new plan was inconsistent with the Commissioners' understanding of what was to take place. Nor does the Report make clear that at the time of the again-newly-revised plan (for Kowalski, wearing a "body bug," to meet Clinton at a Holiday Inn restaurant), Ragghianti had *already* met with the Chairman and Commissioners *twice*, and that she was concerned that the Commissioners' understanding of what was to occur was no longer the plan.

The Report states that "Ragghianti's basis for rejecting the FBI proposal was highly suspect." It further concludes that "Ragghianti's reason for opposing the request, therefore, was essentially that it was likely to be successful." Rpt. at Ch. Two, p. 50. These astounding suppositions are premised on the speculation that the meeting in the restaurant would have provided the relaxed environment in which Clinton could commit illegal acts (apparently, by offering a bribe to Kowalski). In other words, the Parole Commission employee (Kowalski) was to participate in actively encouraging Clinton to commit an illegal act.

The Report ignores entirely that the anticipated illegal act by Clinton could be easily prevented by the mere refusal of Commission employees (such as Kowalski) to meet with Clinton in a restaurant. If the Commission were to place top priority on its doing its own business (as it should), then the Commission should not approve facilitating the illegal acts of a private citizen. Ragghianti had other concerns about entrapment and the appearances of entrapment, which were very well founded. She had been advised that it was not her duty to make the legal determination as to what constituted entrapment. However, it was her threefold duty (delegated by Chairman Gaines) as Chief of Staff to

carry out the wishes of the Commissioners, to see to it that Commission business was properly conducted, and to protect the public image of the Commission. Ragghianti believed that the newly-revised plan proposed by the FBI jeopardized all three.

The Report assumes that any hesitation or refusal by a government agency to participate actively in an FBI undercover or sting operation can be considered impeding the investigation (or even obstruction of justice). The Report cites no authority whatever to establish that any agency or agency employee is required or expected to consent to any and all requests for active participation in an FBI sting operation.

The Report fails to appreciate that an agency, such as the Parole Commission, has its own policies and objectives. The goals, procedures and tactics of the FBI may be in direct conflict with those of the agency. The agency must make its own determination as to the scope of its willingness and ability to participate in FBI undercover operations.

In this case, the FBI was asking Commission staffers to violate the instructions given to Clinton in the October 26, 1998, letter signed by Ragghianti. The FBI wanted Kowalski to meet personally with Clinton (to serve the goals of the FBI, not the Commission) after Clinton had been advised that future contacts should be in writing. The Commission was not required to go along with the FBI sting. Ragghianti's refusal to do so was based on her principled understanding of the Parole Commission's policies and mandate.

VIII. The Report confuses the chronology of the FBI proposed operations.

The Report describes several proposed operations by the FBI, including the taping of a return telephone call from Clinton in Kowalski's office and the undercover operation in a local restaurant. The proposed meeting at the restaurant would include an FBI agent posing as a Parole Commission staffer who could help Clinton with the Gambino case.

However, the Report confuses the chronology. The Report states that the FBI proposed the meeting at a local restaurant after Agent Dalrymple had listened to the voice mail recordings from Clinton's calls on January 22, 1999. Rpt. at Ch. Two, p. 49. The Report then states:

> After Ragghianti rejected the initial FBI proposal, Agent Dalrymple proposed another possible approach to Roger Clinton. In late January 1999, she suggested that Tom Kowalski page Roger Clinton, and then when Clinton called back, the FBI would tape their conversation.

Rpt. at Ch. Two, p. 51, citing n. 328 (the meeting notes of the January 26, 1999, meeting with the Commissioners).

In fact, the first proposal by Agent Dalrymple was the taping of Clinton's return telephone call. This proposal preceded the restaurant plan. This is the proposal discussed by the Commissioners at the January 26, 1999, meeting.

The undercover restaurant operation was proposed several weeks later, after Agent Dalrymple had suggested taping Clinton's return call to Kowalski. As discussed above, the Holiday Inn restaurant plan included an FBI undercover agent, who would accompany Kowalski to a meeting with Clinton at the motel's restaurant, posing as a Parole Commission staffer. However, on March 19, 1999, Kowalski received another telephone call from Clinton. Kowalski contacted Agent Dalrymple and a new plan was devised in which Kowalski would meet Clinton the next Tuesday at a restaurant. Kowalski would be wearing a recording device. Ragghianti Memorandum [Confidential Think Piece], dated March 19, 1999 (attached hereto as Exhibit 9).

The Report does not clarify that the Commissioners had made it clear to Ragghianti that they did not want the Commission to be *actively* involved in a sting. Nor does the Report make clear that the Commissioners had expressly ordered that they not be further informed about the details of the investigation (because of their ongoing concerns that they might be forced to recuse themselves from voting on the case).

The Commissioners by this time had voted that they would not forbid Kowalski's involvement, since Stover had advised them that to do so could be tantamount to obstructing justice. Ragghianti went to Stover at this point, and expressed her concern that the newly-revised restaurant sting proposal was not the scenario which had been presented to the Commissioners. She also expressed her concerns that she could not consult the Commissioners for a third time because she had been expressly told (by the Commissioners) that she should not do so, as the concern was rapidly growing that the Commissioners' ability to be objective decision-makers in the Gambino case would be compromised. (In fact, the Chairman eventually felt forced to recuse himself from the case.)

As the Commission's Chief of Staff, it was Ragghianti's responsibility to carry out the wishes of the Commissioners, and to ensure that Commission business was conducted as normally as possible, and without undue interference by the investigation. Ragghianti objected to the newly-proposed motel restaurant sting because it was not consistent with the plan presented to the Commissioners in her most recent meeting with them. In other words, the plan proposed by the FBI was in violation of the Commissioners' wishes, as well as the policies and procedures of the Commission, which did not normally conduct its business in motel restaurants.

When Ragghianti went to Stover's office, she stated that she wanted to call the office of the Deputy Attorney General to speak with Kevin Ohlsen (whom they had previously consulted on the Clinton matter). In the resulting telephone call on March 19, 1999, Ragghianti and Stover spoke with David Margolis, an Associate Deputy Attorney General, and Kevin Ohlsen, the Chief of Staff to the Deputy Attorney General.

The topics discussed in this telephone call are described in the Confidential Think Piece, dated March 19, 1999, as well as in Ragghianti's handwritten notes, dated March 19, 1999 (attached hereto as Exhibit 10), and Stover's handwritten notes, dated March 19, 1999 (attached hereto as Exhibit 11). These documents indicate that Justice Department attorneys Margolis and Ohlsen supported Ragghianti's view that the decision by Kowalski about participating in the FBI investigation was not a personal decision. Margolis stated that, obviously, Kowalski had been contacted in his role as a representative of the Commission. Moreover, the Commission had every right to instruct Kowalski what to do about the FBI investigation.

In addition, Margolis assured Ragghianti that the Commission could make a judgment call as to the extent of its participation in any FBI investigation. Margolis explained that the Commission would not be accused of "obstruction of justice" if it did not participate in any FBI investigation. In other words, the Commission was not obligated to approve participation by its employees in any FBI sting or undercover operation. The determination as to the extent of participation of Commission employees was solely at the discretion of the Commission. At hearing this, Ragghianti was even more concerned that the Commissioners had received poor legal advice from General Counsel Stover, who had advised them that failure to cooperate in the investigation might be considered obstruction of justice. In addition, Ragghianti noted in the telephone conversation with Margolis and Ohlsen that there was acknowledgment that the Commission might be subjected to criticism (if it allowed participation in the proposed sting), a concern of hers as well.

The Report indicates correctly that Kowalski agreed to cooperate with the FBI investigation. Kowalski left a voice mail for Clinton, but Clinton did not call back. Rpt. at Ch. Two, p. 53. The proposed restaurant operation was not conducted. However, the FBI did wire Kowalski's office and obtain a tape of a conversation with Clinton on March 23, 1999. The Report does not clarify that Ragghianti allowed the taping because it was consistent with her understanding of the directives of the Commissioners - that as long as the normal conduct of Commission business was not impeded, Kowalski could cooperate with the investigation.

Clinton had told Kowalski he would come by the Parole Commission offices and meet with him. Kowalski advised the Committee that the FBI had suggested questions to ask Clinton, such as, "Is there anything you want me to do?" Rpt. at Ch. Two, p. 53-54. Clinton did not provide any incriminating responses. After the meeting, FBI agents came to Kowalski's office and told him that they would have to close the investigation. It appears that the FBI ceased its investigation of Clinton's contacts with the Parole Commission after this taped conversation. A transcript of this conversation exists, but the Justice Department refused to produce it to the Committee. Rpt. at Ch. Two, p. 54, n. 360.

IX. The Report unfairly speculates about Ragghianti's "motive" in refusing to permit the FBI to conduct a sting using a Commission employee in a restaurant.

The Report speculates about Ragghianti's "motive" in rejecting the FBI's request to have a sting in a local restaurant using Kowalski. The Report states:

> The real question is what was Marie Ragghianti's actual motive for rejecting the FBI request. Ragghianti had a reputation for ethical conduct prior to coming to the Commission. That she would make such a decision is, therefore, surprising. However, she clearly went out of her way to be accommodating to Roger Clinton. Whether Ragghianti was trying to curry favor with the Clinton Administration or whether she just genuinely liked Roger Clinton is unclear. But, for Ragghianti to ignore the advice of the Parole Commission General Counsel regarding such a sensitive legal matter suggests, at best, that she was not objective in her handling of the Clinton-Gambino matter. At worst, Ragghianti may have been trying to protect Roger Clinton.

Rpt. at Ch. Two, p. 50.

The language in this paragraph is profoundly offensive and based on the series of false and unsubstantiated assumptions described above. It assumes that Ragghianti ignored the advice of the Parole Commission General Counsel (Stover) about "such a sensitive legal matter." However, the paragraph does not identify the legal advice from Stover and does not explain how Ragghianti ignored it (nor does it cite any authority requiring Ragghianti to follow the unspecified advice from Stover). As Chief of Staff, Ragghianti reported to Chairman Gaines, not to Stover. Furthermore, she had sought legal advice from others (e.g., Margolis and Ohlsen). Additionally, Ragghianti knew that the Chairman was himself an attorney with years of experience in State and Federal parole law.

The Report further speculates that Kowalski's lack of comfort in participating in the taped conversation with Clinton may have had an impact on Clinton. The speculation continues in contemplating that the undercover operation might have been more successful. (Ironically, among Ragghianti's many concerns was the possibility that the motel restaurant sting operation could be bungled, and thus subject the Commission to public derision and humiliation.) The conclusion is stated as follows:

> The failure of the taped conversation with Kowalski makes Ragghianti's decision to reject the FBI undercover proposal even more significant. If the FBI was able to have a trained, professional undercover agent discussing Gambino's parole with Clinton, it might have made a significant difference in the FBI's case. However, due to Ragghianti's refusal to cooperate with the FBI, it is impossible to know what would have happened.

Rpt. at Ch. Two, p. 54.

The Report blames Ragghianti for the fact that the FBI did not trap Roger Clinton attempting or committing an illegal act. The Report does not acknowledge the possibility that the FBI did not trap Clinton attempting an illegal act because Clinton was not attempting an illegal act. The Report appears to be disappointed in the lack of evidence collected to prove that Clinton had committed a crime. It therefore blames this lack of evidence on Ragghianti. The Report does not credit Ragghianti for carrying out her duties as Chief of Staff conscientiously and as directed by the Parole Commissioners, including Chairman Gaines.

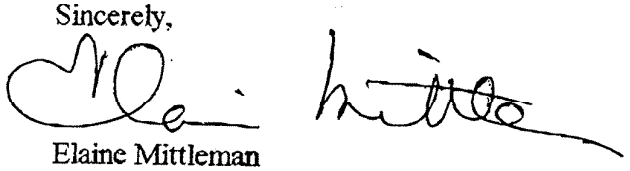
The finding in the Report that Ragghianti hindered the FBI's investigation is wrong. Ragghianti worked diligently with other Commission staffers and Justice Department lawyers to determine the Commission's legally appropriate response. The FBI's investigation presented an awkward situation, because the Commissioners themselves did not want to be involved or even informed based on concerns about recusal and interference with Parole Commission business. Ragghianti was placed in the middle of a complex situation and she worked diligently to facilitate the FBI investigation to the extent it did not interfere with or violate the Commission's normal conduct of business.

The Report noted that Ragghianti "had a reputation for ethical conduct prior to coming to the Commission." Rpt. at Ch. Two, p. 50. A careful examination of Ragghianti's handling of this delicate and complex situation at the Parole Commission reinforces - and enhances - her national reputation for integrity and ethical conduct. Consequently, it is particularly outrageous that the Report appears to draw the opposite conclusion about her. The power and resources of this Committee should not be used to blemish unfairly and incorrectly the reputation of Ragghianti, or any other government employee who strives to be responsive to her duties and professional responsibilities.

Representative Burton, I am asking that you amend the Report and delete the statements that indicate or imply that Marie Ragghianti hindered the FBI's investigation or gave special favors to Roger Clinton. I would be pleased to provide additional information.

Thank you for your attention to this important matter.

Sincerely,



Elaine Mittleman

Enclosures

cc: Representative Henry Waxman

MR H

Exhibit 5

U.S. DEPARTMENT OF JUSTICE
United States Parole Commission

Office of the Chairman

5550 Friendship Boulevard
Chevy Chase, Maryland 20815-7201

Telephone: (301) 492-5990
Facsimile: (301) 492-6694

October 26, 1998

Mr. Roger Clinton
1015 Gayley Avenue
Los Angeles, CA 90024

Re: Your invitation of October 26, 1998

Dear Mr. Clinton:

The Chairman has asked me to express his sincere regrets that he cannot accept your kind invitation to meet during your trip to Washington this week. As I have mentioned before, it is agency policy that members of the Commission cannot engage in private meetings of any kind with parties having an interest in parole proceedings. This is true even if the meeting is sought for purely social reasons.

Similarly, our policy also restricts the ability of Commission staff from engaging in any continued series of calls or discussions on official matters that are not in the context of an agency proceeding. Should you have any further request, I encourage you to write us. I hope that this will not be inconvenient, and I hope that both you and your family are well.

Sincerely,

Marie F. Ragghianti by ALV

Marie F. Ragghianti
Chief of Staff
U.S. Parole Commission

MFR/alv
By Facsimile and Mail

Exhibit 6

ReedSmith

Nancy Luque • 202.414.9408 • nluque@reedsmith.com

March 14, 2002

VIA FACSIMILE

Dan Burton, Chairman
Committee on Government Reform
House of Representatives
Congress of the United States
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: "Justice Undone: Clemency Decisions in the Clinton White House"

Dear Mr. Chairman:

There are a number of demonstrably false and misleading statements in the referenced report, authored by Government Reform Committee majority staff, regarding my client, Hugh Rodham time does not permit the compilation of an exhaustive list but, as it would appear that 18 U.S.C. § 1001 (c)(2) applies to staff members who communicate false information to Congress, it is in everyone's interest that the following material false statements concerning Mr. Rodham's cooperation with the Committee be corrected:

- **Under the heading "Failure of Key Parties to Cooperate in the Hugh Rodham Investigation," the report falsely indicates that Mr. Rodham "extended only partial cooperation to the Committee" (page 77).**

  Please review the correspondence between the staff and counsel for Mr. Rodham; with the exception of matters related to Mr. Vignali, Mr. Rodham, through counsel, answered each and every question posed to him.

- **Mr. Rodham "made a blanket invocation of the [attorney-client] privilege" to "refuse[ ]" to produce Carlos Vignali's records and to discuss his case "even though the privilege does not apply to the vast majority of Rodham's activities. For example, Rodham's contacts with third parties, like White House staff, are not covered by the attorney-client privilege...by using the attorney-client privilege..." Mr. Rodham "[sought] to avoid questions about his activities rather than to protect any legitimately privileged information" (at pages 46 and 77).**

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Washington, DC

Please review the attached letter which indicates that Mr. Rodham declined to discuss Mr. Vignali *pursuant to Mr. Vignali's request*, and its accompanying citation to the District of Columbia Rule of Professional Responsibility 1.6, also attached. Further, Mr. Rodham *did* respond to questions that did not implicate the privilege, where it was ethical for him to have done so. *For Example*, in my letter to the committee dated February 28, 2001, I *specifically* answered questions about Mr. Rodham's 'contacts with third parties' at his direction.

Further, the following unsupported and unsupportable false assertions and implications should be deleted from the Committee report:

- **"Rodham repeatedly provided false information during his communications with the White House" regarding Mr. Vignali (page 3); and "[d]espite Hugh Rodham's efforts to mislead..." (page 49).**

  To the extent the report implies that Mr. Rodham *knowingly* provided false information to anyone, it is absolutely false. Mr. Rodham was entitled to rely on Mr. Vignali's pardon application which indicated no prior record, particularly in light of the fact that he did not have the means (e.g. access to NCIC) to investigate Mr. Vignali's criminal history. Further, Mr. Vignali did *not* play a "major role in the offense" according to the judge who sentenced him (see U.S. Sentencing Guidelines).

- **Under the heading "Hugh Rodham's Invocation of First Lady Hillary Clinton," the Report cites a "note" indicating that "*this* is very important to [Mr.Rodham] and the First Lady," with no indication of what "this" is, and further the report claims that the "note leaves (sic) only two possibilities: (1) that Hugh Rodham indeed told Hillary Clinton about his efforts on behalf of Carlos Vignali and that Hillary Clinton was not being candid when she stated [otherwise]; or (2) Hugh Rodham was lying when he [said] that the Vignali case was "very important" to the First Lady" (page 57).**

  Both Mr. Rodham and Senator Clinton have stated repeatedly and truthfully that they did not discuss Mr. Vignali (or Mr. Braswell), or the fact that Mr. Rodham was representing individuals seeking clemency. Nor did Mr. Rodham tell anyone that *Mr. Vignali* was important to Sen. Clinton. The report writer jumps to erroneous conclusions in order to falsely accuse Mr. Rodham (or Senator Clinton) of lying.

- **Citing to *press reports*, the Committee report speculates that Mr. Rodham discussed the pardons with President Clinton (page 72), and that the President was aware Mr. Rodham was representing Mr. Braswell.**

Such speculation is not only pure fiction, it is irresponsible to insinuate, without a shred of proof, that President Clinton *and* Mr. Rodham have lied about the matter. *They did not discuss the matter, period.*

- **In addition, the section of the report entitled "Hugh Rodham's Efforts to Obtain Clemency for the Lums" at pages 74-77 is wholly inaccurate, and falsely implies that Mr. Rodham has "refused" to answer questions about his "representation" of the Lums.**

  To the contrary, Mr. Rodham informed the Committee staff of the names of those individuals he represented and, by implication, those who he did not represent: Mr. Rodham did not represent the Lums nor did he "lobby" on their behalf. Moreover, the report's fleeting references to monies paid "by Rodham to the Lums" is not only incomprehensible, but clearly irrelevant to any claim that *he represented them.*

Finally, I never told *anyone* that Mr. Rodham had "no plans to return the remaining $154,000 to Vignali," (page 63) and that quote is patently false.

As noted above, because I had only twenty-four hours to review the report, the above is not an exhaustive list of inaccuracies. I would be pleased to discuss the additional errors, including those that relate to the merits of Messr.'s Braswell and Vignali's pardons, with committee staff.

I look forward to a reply and/or to receiving a corrected Committee report.

Sincerely,

Nancy Luque

cc: Hugh Rodham
The Honorable Henry A. Waxman, Ranking Minority Member

ReedSmith LLP

Nancy Luque • 202.414.9408 • nluque@reedsmith.com

February 28, 2001

Via Facsimile 202-225-3974
Dan Burton, Chairman
Congress of the United States
House of Representatives
Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Pardon Investigation

Dear Mr. Chairman:

This will respond to your February 21, 2001 letter inquiry to my client, Hugh Rodham. He appreciates the opportunity to respond in this manner. You have asked the following questions:

1. From 1992 to present, have you or your firm represented any individual seeking any grant of federal Executive Clemency? If so, list all such individuals.

Mr. Rodham's firm represented Mr. Carlos Vignali and Mr. A. Glenn Braswell in connection with their petitions for executive clemency.

2. Have you or your firm received any payment for representing any individual seeking a grant of federal Executive Clemency or for advocating a grant of federal Executive Clemency? If so, please list all such payments and the individual making such payment.

Mr. Vignali's father made one payment for $4,280 and a second payment for $200,000, on his son's behalf.

Mr. Braswell made one payment for $30,000 and wire transferred $200,000, minus wire fees, to Mr. Rodham's law firm.

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3. Have you or any individual in your firm had contact with President Clinton, First Lady Hillary Clinton or any individual in the White House, the purpose of which was to advocate a pardon or commutation? If so, please list all such contacts, naming the individuals with whom you spoke and describe the substance of such communication.

See response to question 4 below.

4. Please describe your role in the pardon or commutation requests of Carlos Vignali or Almon Glenn Braswell.

Mr. Rodham had no contact with either President Clinton or Senator Clinton regarding either of these matters.

With respect to Mr. Vignali, Mr. Rodham recalls three contacts with Bruce Lindsay of the White House Counsel's office. He submitted and discussed the merits of Mr. Vignali's petition, he subsequently submitted and discussed letters of recommendation, and he made a final follow-up inquiry.

With respect to Mr. Braswell, Mr. Rodham recalls at least two contacts with Meredith Cabe of the White House Counsel's office. He forwarded a letter to her written to President Clinton by Kendall Coffee on Mr. Braswell's behalf, and he made a follow-up inquiry.

Finally, with respect to the Committee's request for records, I called the Committee's Chief Counsel, as is suggested in the letter request, to seek additional time to comply. Because these records may be subject to attorney-client privilege, the additional time will assure a more careful review.

Sincerely,

Nancy Luque

cc: Honorable Henry Waxman (via fax)
Ranking Minority Member

ReedSmith LLP

Nancy Luque • 202.414.9408 • nluque@reedsmith.com

March 7, 2001

Via First Class Mail
Dan Burton, Chairman
Congress of the United States
House of Representatives
Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Pardon Investigation

Dear Mr. Chairman:

Provided herewith are certain records responsive to the Committee's request related to Mr. Rodham's request for Executive Clemency for A. Glenn Braswell.

Counsel for Mr. Vignali has asked that I not provide records related to Mr. Rodham's request concerning Mr. Vignali because they are protected by the attorney-client privilege and his client has asked that I keep them confidential pursuant to the District of Columbia Rule of Professional Responsibility 1.6.

If I can be of further assistance, please do not hesitate to call me.

Sincerely,

Nancy Luque

cc: Honorable Henry Waxman (via facsimile)
Ranking Minority Member

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[12] The concept of joint responsibility does not require the referring lawyer to perform any minimum portion of the total legal services rendered. The referring lawyer may agree that the lawyer to whom the referral is made will perform substantially all of the services to be rendered in connection with the representation, without review by the referring lawyer. Thus, the referring lawyer is not required to review pleadings or other documents, attend hearings or depositions, or otherwise participate in a significant and continuing manner. The referring lawyer does not, however, escape the implications of joint responsibility, *see* Comment [11], by avoiding direct participation.

[13] When fee divisions are based on assumed joint responsibility, the requirement of paragraph (a) that the fee be reasonable applies to the total fee charged for the representation by all participating lawyers.

[14] Paragraph (e) requires that the client be advised, in writing, of the fee division and states that the client must affirmatively consent to the proposed fee arrangement. The Rule does not require disclosure to the client of the share that each lawyer is to receive but does require that the client be informed of the identity of the lawyers sharing the fee, their respective responsibilities in the representation, and the effect of the association of lawyers outside the firm on the fee charged.

Disputes Over Fees

[15] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the Bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class, or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) EXCEPT WHEN PERMITTED UNDER PARAGRAPH (c) OR (d), A LAWYER SHALL NOT KNOWINGLY:

(1) REVEAL A CONFIDENCE OR SECRET OF THE LAWYER'S CLIENT;

(2) USE A CONFIDENCE OR SECRET OF THE LAWYER'S CLIENT TO THE DISADVANTAGE OF THE CLIENT;

(3) USE A CONFIDENCE OR SECRET OF THE LAWYER'S CLIENT FOR THE ADVANTAGE OF THE LAWYER OR OF A THIRD PERSON.

(b) "CONFIDENCE" REFERS TO INFORMATION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE UNDER APPLICABLE LAW, AND "SECRET" REFERS TO OTHER INFORMATION GAINED IN THE PROFESSIONAL RELATIONSHIP THAT THE CLIENT HAS REQUESTED BE HELD INVIOLATE, OR THE DISCLOSURE OF WHICH WOULD BE EMBARRASSING, OR WOULD BE LIKELY TO BE DETRIMENTAL, TO THE CLIENT.

(c) A LAWYER MAY REVEAL CLIENT CONFIDENCES AND SECRETS, TO THE EXTENT REASONABLY NECESSARY:

(1) TO PREVENT A CRIMINAL ACT THAT THE LAWYER REASONABLY BELIEVES IS LIKELY TO RESULT IN DEATH OR SUBSTANTIAL BODILY HARM ABSENT DISCLOSURE OF THE CLIENT'S SECRETS OR CONFIDENCES BY THE LAWYER; OR

(2) TO PREVENT THE BRIBERY OR INTIMIDATION OF WITNESSES, JURORS, COURT OFFICIALS, OR OTHER PERSONS WHO ARE INVOLVED IN PROCEEDINGS BEFORE A TRIBUNAL IF THE LAWYER REASONABLY BELIEVES THAT SUCH ACTS ARE LIKELY TO RESULT ABSENT DISCLOSURE OF THE CLIENT'S CONFIDENCES OR SECRETS BY THE LAWYER.

(d) A LAWYER MAY USE OR REVEAL CLIENT CONFIDENCES OR SECRETS:

(1) WITH THE CONSENT OF THE CLIENT AFFECTED, BUT ONLY AFTER FULL DISCLOSURE TO THE CLIENT;

(2) (A) WHEN PERMITTED BY THESE RULES OR REQUIRED BY LAW OR COURT ORDER; AND

(B) IF A GOVERNMENT LAWYER, WHEN PERMITTED OR AUTHORIZED BY LAW:

(3) TO THE EXTENT REASONABLY NECESSARY TO ESTABLISH A DEFENSE TO A CRIMINAL CHARGE, DISCIPLINARY CHARGE, OR CIVIL CLAIM, FORMALLY INSTITUTED AGAINST THE LAWYER, BASED UPON CONDUCT IN WHICH THE CLIENT WAS INVOLVED, OR TO THE EXTENT REASONABLY NECESSARY TO RESPOND TO SPECIFIC ALLEGATIONS BY THE CLIENT CONCERNING THE LAWYER'S REPRESENTATION OF THE CLIENT;

(4) WHEN THE LAWYER HAS REASONABLE GROUNDS FOR BELIEVING THAT A CLIENT HAS IMPLIEDLY AUTHORIZED DISCLOSURE OF A CONFIDENCE OR SECRET IN ORDER TO CARRY OUT THE REPRESENTATION; OR

(5) TO THE MINIMUM EXTENT NECESSARY IN AN ACTION INSTITUTED BY THE LAWYER TO ESTABLISH OR COLLECT THE LAWYER'S FEE.

(c) A LAWYER SHALL EXERCISE REASONABLE CARE TO PREVENT THE LAWYER'S EMPLOYEES, ASSOCIATES, AND OTHERS WHOSE SERVICES ARE UTILIZED BY THE LAWYER FROM DISCLOSING OR USING CONFIDENCES OR SECRETS OF A CLIENT, EXCEPT THAT SUCH PERSONS MAY REVEAL INFORMATION PERMITTED TO BE DISCLOSED BY PARAGRAPHS (c) or (d).

(f) THE LAWYER'S OBLIGATION TO PRESERVE THE CLIENT'S CONFIDENCES AND SECRETS CONTINUES AFTER TERMINATION OF THE LAWYER'S EMPLOYMENT.

(g) THE OBLIGATION OF A LAWYER UNDER PARAGRAPH (a) ALSO APPLIES TO CONFIDENCES AND SECRETS LEARNED PRIOR TO BECOMING A LAWYER IN THE COURSE OF PROVIDING ASSISTANCE TO ANOTHER LAWYER.

(h) FOR PURPOSES OF THIS RULE, A LAWYER WHO SERVES AS A MEMBER OF THE D.C. BAR LAWYER COUNSELING COMMITTEE, OR AS A TRAINED INTERVENOR FOR THAT COMMITTEE, SHALL BE DEEMED TO HAVE A LAWYER-CLIENT RELATIONSHIP WITH RESPECT TO ANY LAWYER-COUNSELEE BEING COUNSELED UNDER PROGRAMS CONDUCTED BY OR ON BEHALF OF THE COMMITTEE. INFORMATION OBTAINED FROM ANOTHER LAWYER BEING COUNSELED UNDER THE AUSPICES OF THE COMMITTEE, OR IN THE COURSE OF AND ASSOCIATED WITH SUCH COUNSELING, SHALL BE TREATED AS A CONFIDENCE OR SECRET WITHIN THE TERMS OF PARAGRAPH (b). SUCH INFORMATION MAY BE DISCLOSED ONLY TO THE EXTENT PERMITTED BY THIS RULE.

(i) FOR PURPOSES OF THIS RULE, A LAWYER WHO SERVES AS A MEMBER OF THE D.C. BAR LAWYER PRACTICE ASSISTANCE COMMITTEE, OR A STAFF ASSISTANT, MENTOR, MONITOR OR OTHER CONSULTANT FOR THAT COMMITTEE, SHALL BE DEEMED TO HAVE A LAWYER-CLIENT RELATIONSHIP WITH RESPECT TO ANY LAWYER-COUNSELEE BEING COUNSELED UNDER PROGRAMS CONDUCTED BY OR ON BEHALF OF THE COMMITTEE. COMMUNICATIONS BETWEEN THE COUNSELOR AND THE LAWYER BEING COUNSELED UNDER THE AUSPICES OF THE COMMITTEE, OR MADE IN THE COURSE OF AND ASSOCIATED WITH SUCH COUNSELING, SHALL BE TREATED AS A CONFIDENCE OR SECRET WITHIN THE TERMS OF PARAGRAPH (b). SUCH INFORMATION MAY BE DISCLOSED ONLY TO THE EXTENT PERMITTED BY THIS RULE. HOWEVER, DURING THE PERIOD IN WHICH THE LAWYER-COUNSELEE IS SUBJECT TO A PROBATIONARY OR MONITORING ORDER OF THE COURT OF APPEALS OR THE BOARD ON PROFESSIONAL RESPONSIBILITY IN A DISCIPLINARY CASE INSTITUTED PURSUANT TO RULE XI OF THE RULES OF THE COURT OF APPEALS GOVERNING THE BAR, SUCH INFORMATION SHALL BE SUBJECT TO DISCLOSURE IN ACCORDANCE WITH THE ORDER.

(j) THE CLIENT OF THE GOVERNMENT LAWYER IS THE AGENCY THAT EMPLOYS THE LAWYER UNLESS EXPRESSLY PROVIDED TO THE CONTRARY BY APPROPRIATE LAW, REGULATION, OR ORDER.

COMMENT:

[1] The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

[2] The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

[3] Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[4] A fundamental principle in the client-lawyer relationship is that the lawyer holds inviolate the client's secrets and confidences. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

Relationship Between Rule 1.6 and Attorney-Client Evidentiary Privilege and Work Product Doctrine

[5] The principle of confidentiality is given effect in two related bodies of law: the attorney-client privilege and the work product doctrine in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege and the work product doctrine apply in judicial

and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. This Rule is not intended to govern or affect judicial application of the attorney-client privilege or work product doctrine. The privilege and doctrine were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under this Rule has limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client privilege and work product doctrine.

[6] The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law; furthermore, it applies not merely to matters communicated in confidence by the client (i.e., confidences) but also to all information gained in the course of the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing or would be likely to be detrimental to the client (i.e., secrets). This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of the information or the fact that others share the knowledge. It reflects not only the principles underlying the attorney-client privilege, but the lawyer's duty of loyalty to the client.

The Commencement of the Client-Lawyer Relationship

[7] Principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Although most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so, the duty of confidentiality imposed by this Rule attaches when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Thus, a lawyer may be subject to a duty of confidentiality with respect to information disclosed by a client to enable the lawyer to determine whether representation of the potential client would involve a prohibited conflict of interest under Rule 1.7, 1.8, or 1.9.

Exploitation of Confidences and Secrets

[8] In addition to prohibiting the disclosure of a client's confidences and secrets, subparagraph (a)(2) provides that a lawyer may not use the client's confidences and secrets to the disadvantage of the client. For example, a lawyer who has learned that the client is investing in specific real estate may not seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Similarly, information acquired by the lawyer in the course of representing a client may not be used to the disadvantage of that client even after the termination of the lawyer's representation of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about the former client when later representing another client. Under subparagraphs (a)(3) and (d)(1) a lawyer may use a client's confidences and secrets for the lawyer's own benefit or that of a third party only after the lawyer has made full disclosure to the client regarding the proposed use of the information and obtained the client's affirmative consent to the use in question.

Authorized Disclosure

[9] A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

[10] The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when the client consents after full disclosure, when necessary to perform the professional employment, when permitted by these Rules, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of the client to partners or associates of the lawyer's firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to nonlawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training employees so that the sanctity of all confidences and secrets of clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of the client and act scrupulously in the making of decisions that may involve the disclosure of information obtained in the course of the professional relationship. Thus, in the absence of consent of the client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should the lawyer, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or the client's confidences or secrets would be revealed to such lawyer. Proper concern for professional duty should cause a lawyer to shun indiscreet conversations concerning clients.

[11] Unless the client otherwise directs, it is not improper for a lawyer to give limited information from client files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided the lawyer exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

Disclosure Adverse to Client

[12] The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts that would enable the lawyer to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited. Nevertheless, when the client's confidences or secrets are such that the lawyer knows or reasonably should know that the client or any other person is likely to kill or do substantial bodily injury to another unless the lawyer discloses client confidences or secrets, the lawyer may reveal the client's confidences and secrets if necessary to prevent harm to the third party.

[13] Several situations must be distinguished.

[14] First, the lawyer may not counsel or assist a client to engage in conduct that is criminal or fraudulent. *See* Rule 1.2(e). Similarly, a lawyer has a duty not to use false evidence of a nonclient and may permit introduction of the false evidence of a client only in extremely limited circumstances in criminal cases when the witness is the defendant client. *See* Rule 3.3(a)(4) and (b). This Rule is essentially a special instance of the duty prescribed in Rule 1.2(e) to avoid assisting a client in criminal or fraudulent conduct.

[15] Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated Rule 1.2(e), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

[16] Third, the lawyer may learn that a client intends prospective conduct that is criminal and likely to result in death or substantial bodily harm unless disclosure of the client's intentions is made by the lawyer. As stated in paragraph (c), the lawyer has professional discretion to reveal information in order to prevent such consequences. The lawyer may make a disclosure in order to prevent homicide or serious bodily injury which the lawyer reasonably believes is intended by a client. The "reasonably believes" standard is applied because it is very difficult for a lawyer to "know" when such a heinous purpose will actually be carried out, for the client may have a change of mind.

[17] The lawyer's exercise of discretion in determining whether to make disclosures that are reasonably likely to prevent the death or substantial bodily injury of another requires consideration of such factors as the client's tendency to commit violent acts or, conversely, to make idle threats. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose. A lawyer's decision not to take preventive action permitted by subparagraph (c)(1) does not violate this Rule.

Withdrawal

[18] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). If the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent, or if the client has used the lawyer's services to perpetrate a crime or a fraud, the lawyer may (but is not required to) withdraw, as stated in Rule 1.16(b)(1) and (2).

[19] After withdrawal under either Rule 1.16(a)(1) or Rule 1.16(b)(1) or (2), the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Giving notice of withdrawal, without elaboration, is not a disclosure of a client's confidences and is not proscribed by this Rule or by Rule 1.16(d). Furthermore, a lawyer's statement to a court that withdrawal is based upon "irreconcilable differences between the lawyer and the client," as provided under paragraph [3] of the Comment to Rule 1.16, is not elaboration. Similarly, after withdrawal under either Rule 1.16(a)(1) or Rule 1.16(b)(1) or (2), the lawyer may retract or disaffirm any opinion, document, affirmation, or the like that contains a material misrepresentation by the lawyer that the lawyer reasonably believes will be relied upon by others to their detriment.

[20] Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization. *See* Comment to Rule 1.13.

Dispute Concerning Lawyer's Conduct

[21] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Charges, in defense of which a lawyer may disclose client confidences and secrets, can arise in a civil, criminal, or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together.

[22] The lawyer may not disclose a client's confidences or secrets to defend against informal allegations made by third parties; the Rule allows disclosure only if a third party has formally instituted a civil, criminal, or disciplinary action against the lawyer. Even if the third party has formally instituted such a proceeding, the lawyer should advise the client of the third party's action and request that the client respond appropriately, if this is practicable and would not be prejudicial to the lawyer's ability to establish a defense.

[23] If a lawyer's client, or former client, has made specific allegations against the lawyer, the lawyer may disclose that client's confidences and secrets in establishing a defense, without waiting for formal proceedings to be commenced. The requirement of subparagraph (d)(3) that there be "specific" charges of misconduct by the client precludes the lawyer from disclosing confidences or secrets in response to general criticism by a client; an example of such a general criticism would be an assertion by the client that the lawyer "did a poor job" of representing the client. But in this situation, as well as in the defense of formally instituted third-party proceedings, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Fee Collection Actions

[24] Subparagraph (d)(5) permits a lawyer to reveal a client's confidences or secrets if this is necessary in an action to collect fees from the client. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. Subparagraph (d)(5) should be construed narrowly; it does not authorize broad, indiscriminate disclosure of secrets or confidences. The lawyer should evaluate the necessity for disclosure of information at each stage of the action. For example, in drafting the complaint in a fee collection suit, it would be necessary to reveal the "secrets" that the lawyer was retained by the client, that fees are due, and that the client has failed to pay those fees. Further disclosure of the client's secrets and confidences would be impermissible at the complaint stage. If possible, the lawyer should prevent even the disclosure of the client's identity through the use of John Doe pleadings.

[25] If the client's response to the lawyer's complaint raised issues implicating confidences or secrets, the lawyer would be permitted to disclose confidential or secret information pertinent to the client's claims or defenses. Even then, the Rule would require that the lawyer's response be narrowly tailored to meet the client's specific allegations, with the minimum degree of disclosure sufficient to respond effectively. In addition, the lawyer should continue, throughout the action, to make every effort to avoid unnecessary disclosure of the client's confidences and secrets and to limit the disclosure to those having the need to know it. To this end the lawyer should seek appropriate protective orders and make any other arrangements that would minimize the risk of disclosure of the confidential information in question, including the utilization of in camera proceedings.

Disclosures Otherwise Required or Authorized

[26] The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, subparagraph (d)(2) requires the lawyer to invoke the privilege when it is applicable. The lawyer may comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client. But a lawyer ordered by a court to disclose client confidences or secrets should not comply with the order until the lawyer has personally made every reasonable effort to appeal the order or has notified the client of the order and given the client the opportunity to challenge it.

[27] The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. *See* Rules 2.2, 2.3, 3.3, and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption exists against such a supersession.

Former Client

[28] The duty of confidentiality continues after the client-lawyer relationship has terminated.

Services Rendered in Assisting Another Lawyer Before Becoming a Member of the Bar

[29] There are circumstances in which a person who ultimately becomes a lawyer provides assistance to a lawyer while serving in a nonlawyer capacity. The typical situation is that of the law clerk or summer associate in a law firm or government agency. Paragraph (g) addresses the confidentiality obligations of such a person after becoming a member of the Bar; the same confidentiality obligations are imposed as would apply if the person had been a member of the Bar at the time confidences or secrets were received. This resolution of the confidentiality obligation is consistent with the reasoning employed in D.C. Bar Legal Ethics Committee Opinion 84 (1980). For a related provision dealing with the imputation of disqualifications arising from prior participation as a law clerk, summer associate, or in a similar position, see Rule 1.10(b).

Bar Sponsored Counseling Programs

[30] Paragraph (h) adds a provision dealing specifically with the disclosure obligations of lawyers who are assisting in the counseling programs of the D.C. Bar's Lawyer Counseling Committee. Members of that committee, and lawyer-intervenors who assist the committee in counseling, may obtain information from lawyer-counselees who have sought assistance from the counseling programs offered by the committee. It is in the interests of the public to encourage lawyers who have alcohol or other substance abuse problems to seek counseling as a first step toward rehabilitation. Some lawyers who seek such assistance may have violated provisions of the Rules of Professional Conduct, or other provisions of law, including

criminal statutes such as those dealing with embezzlement. In order for those who are providing counseling services to evaluate properly the lawyer-counselee's problems and enhance the prospects for rehabilitation, it is necessary for the counselors to receive completely candid information from the lawyer-counselee. Such candor is not likely if the counselor, for example, would be compelled by Rule 8.3 to report the lawyer-counselee's conduct to Bar Counsel, or if the lawyer-counselee feared that the counselor could be compelled by prosecutors or others to disclose information.

[31] It is similarly in the interest of the public to encourage lawyers to seek the assistance of the D.C. Bar's Lawyer Practice Assistance Committee to address management problems in their practices. In order for those who are providing counseling services through the Lawyer Practice Assistance Committee to evaluate properly the lawyer-counselee's problems and enhance the prospects for self-improvement by the counselee, paragraph (i) adds a provision addressing the confidentiality obligations of lawyers who are assisting in the counseling programs of the Lawyer Practice Assistance Committee.

[32] These considerations make it appropriate to treat the lawyer—counselee relationship as a lawyer-client relationship, and to create an additional limited class of information treated as secrets or confidences subject to the protection of Rule 1.6. The scope of that information is set forth in paragraph (h) and (i). The lawyer-client relationship is deemed to exist only with respect to the obligation of confidentiality created under Rule 1.6, and not to obligations created elsewhere in these Rules, including the obligation of zealous representation under Rule 1.3 and the obligation to avoid conflicts of interest set forth in Rules 1.7 and 1.9. The obligation of confidentiality extends to non-lawyer assistants of lawyers serving the committee. See Rule 5.1.

[33] Notwithstanding the obligation of confidentiality under paragraph (i), during the period in which a lawyer-counselee is subject to a probationary or monitoring order of the Court of Appeals or the Board on Professional Responsibility in a disciplinary case instituted pursuant to Rule XI of the Rules of the Court of Appeals Governing the Bar, communications between the counselor and the lawyer being counseled under the auspices of the Lawyer Practice Assistance Committee shall be subject to disclosure in accordance with an Order of the Court or the Board, since the participation of the lawyer-counselee in the programs of the committee in such circumstances is not voluntary.

[34] Ethical rules established by the District of Columbia Court of Appeals with respect to the kinds of information protected from compelled disclosure may not be accepted by other forums or jurisdictions. Therefore, the protections afforded to lawyer-counselees by paragraphs (h) and (i) may not be available to preclude disclosure in all circumstances. Furthermore, lawyers who are members of the bar of other jurisdictions may not be entitled under the ethics rules applicable to members of the bar in such other jurisdictions, to forgo reporting violations to disciplinary authorities pursuant to the other jurisdictions' counterparts to Rule 8.3.

Government Lawyers

[35] Subparagraph (d)(2) was revised, and paragraph (i) was added, to address the unique circumstances raised by attorney-client relationships within the government.

[36] Subparagraph (d)(2)(A) applies to both private and government attorney-client relationships. Subparagraph (d)(2)(B) applies to government lawyers only. It is designed to permit disclosures that are not required by law or court order under Rule 1.6(d)(2)(A), but which the government authorizes its attorneys to make in connection with their professional services to the government. Such disclosures may be authorized or required by statute, executive order, or regulation, depending on the constitutional or statutory powers of the authorizing entity. If so authorized or required, subparagraph (d)(2)(B) governs.

[37] The term "agency" in paragraph (i) includes, inter alia, executive and independent departments and agencies, special commissions, committees of the legislature, agencies of the legislative branch such as the General Accounting Office, and the courts to the extent that they employ lawyers (e.g., staff counsel) to counsel them. The employing agency has been designated the client under this rule to provide a commonly understood and easily determinable point for identifying the government client.

[38] Government lawyers may also be assigned to provide an individual with counsel or representation in circumstances that make clear that an obligation of confidentiality runs directly to that individual and that subparagraph (d)(2)(A), not (d)(2)(B), applies. It is, of course, acceptable in this circumstance for a government lawyer to make disclosures about the individual representation to supervisors or others within the employing governmental agency so long as such disclosures are made in the context of, and consistent with, the agency's representation program. *See, e.g.*, 28 C.F.R. §§ 50.15 and 50.16. The relevant circumstances, including the agreement to represent the individual, may also indicate the extent to which the individual client to whom the government lawyer is assigned will be deemed to have granted or denied consent to disclosures to the lawyer's employing agency. Examples of such representation include representation by a public defender, a government lawyer representing a defendant sued for damages arising out of the performance of the defendant's government employment, and a military lawyer representing a court-martial defendant.

RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE

(a) A LAWYER SHALL NOT ADVANCE TWO OR MORE ADVERSE POSITIONS IN THE SAME MATTER.

(b) EXCEPT AS PERMITTED BY PARAGRAPH (c)

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COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

Exhibit 7

Congress of the United States
House of Representatives

XAVIER BECERRA
30TH DISTRICT, CALIFORNIA

April 18, 2002

Chairman Dan Burton
House Committee on Government Reform
2157 Rayburn HOB
Washington DC 20515

Dear Chairman Burton:

Having reviewed your Presidential pardons oversight report, "Justice Undone: Clemency Decisions in the Clinton White House," released on March 15, 2002, I submit the following comments to clarify and correct passages therein. I respectfully request that these comments be included in the final report issued by the House of Representatives' Committee on Government Reform ("Committee").

I should begin by pointing out that at no time during your official examination of the President's pardons did any of the Committee's investigators contact me or attempt to do so to receive firsthand the details of my actions pertaining to the Vignali commutation. Instead, it appears that your report relies almost exclusively on secondary sources for its substance.

These secondary sources, principally newspaper articles, contain inaccuracies. As a result, the portions of the Committee report, which make reference to me, contain factual errors and troubling distortions.

Significantly, the Committee report commits a major error in mapping out the sequence of relevant events. The investigators failed to lay out the facts in their proper order. This is important because it has the effect of distorting my actions and, indeed, my intentions in this matter.

The Committee report attributes to me remarks that I never said. On page 24 the report states that "Becerra asked [U.S. Attorney] Mayorkas ... whether a commutation could be granted." I did not.

In another reference to me, on page 25, the report asserts that "Becerra has steadfastly maintained that he did nothing wrong and did not ever *explicitly* support Vignali's clemency grant." (Emphasis added.) Does the report try to leave wrongfully the impression that I may have offered implicit support? Such editorializing through the use of the word "explicitly" has no place in what should be an official and unbiased accounting of the facts.

Two sentences later the report does it again: "[Becerra] has said that he never *specifically* asked President Clinton to commute Carlos Vignali's sentence." (Emphasis added.) I never asked the President to do any such thing, "specifically," generally, or in any way. Reporting techniques that unnecessarily and inaccurately characterize the facts undermine the credibility of investigative reports.

The facts speak for themselves. That is the best way to report them, and that would have been the best way for the Committee to report them.

Once again, I respectfully request that my remarks herein be inserted at the appropriate point in the Committee's report on this matter. Thank you in advance for your attention.

Sincerely,

XAVIER BECERRA
Member of Congress

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

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March 13, 2002

VIA FACSIMILE

Honorable Dan Burton
Chairman
House Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Burton:

I have briefly reviewed portions of the draft majority report entitled, "Justice Undone: Clemency Decisions in the Clinton White House." At page 166 of that report, there purports to be a description of the Committee's efforts to obtain my testimony last year. This letter is to correct the factual inaccuracies in that description.

First, and most importantly, at no point before I boarded an airplane to California on February 28, 2001, did any member of the Committee's staff inform me or any attorney with my firm that the Committee would subpoena me to attend the hearing.

Prior to receipt of your letter of February 26, 2001, it was totally unclear whether my testimony would even be requested. Indeed, my appearance was at that time contingent upon whether the testimony of I. Lewis Libby would be sought by the minority.

Moreover, your letter of February 26 still simply requested my testimony and made no mention of a subpoena. My response of February 27, which was sent to the Committee prior to 7:40 pm (contrary to the assertion in the majority report), reiterated my willingness to voluntarily appear before the Committee. It stated:

> I intend to fully cooperate with the Committee's efforts. I will return to Washington next week and am willing to meet with you or your staff at a mutually convenient time.

As I stated in my testimony, I was in my office until 9:00 pm that evening, received no response and, consequently, left for California the next morning to proceed with my business appointments.

I reiterate – at no time before I boarded the airplane for California was either I, or any attorney at my firm, advised that I would be subpoenaed to attend the hearing. At

no time did I attempt to avoid compulsory process and, in fact, I offered in writing to appear voluntarily. I respectfully request that the above-referenced inaccuracies be corrected prior to consideration of the majority report.

Sincerely,

Peter J. Kadzik

PJK/prb

cc: The Honorable Henry A. Waxman, Ranking Minority Member

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trial lawyers

April 4, 2002

VIA FACSIMILE
AND OVERNIGHT MAIL

Hon. Dan Burton
Chairman
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Additional Views Re Report Entitled "Justice Undone: Clemency Decisions in the Clinton White House"

Dear Congressman Burton:

Our firm represents the Hon. Leroy D. Baca, Sheriff of Los Angeles County, in connection with your Committee's investigation of the circumstances surrounding numerous "eleventh hour" pardons and commutations by President Clinton in January 2001. Sheriff Baca was interviewed by Committee counsel in June 2001 in connection with the commutation of Carlos Vignali, and there are references to Sheriff Baca in the above-referenced report ("Report"), which was prepared by your Committee counsel, approved by the Committee and released on or about March 20, 2002. We understand that the Committee will be considering "Additional Views" further to the Report on April 8, 2002, and we respectfully request that this letter be made part of the official record at such time.

As discussed herein, the Report contains statements, findings and conclusions regarding Sheriff Baca that are false and misleading. This letter first addresses certain flaws in the process

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whereby the Report was prepared, and then describes the Report's shortcomings related to Sheriff Baca.

The Committee Counsel's Investigation Was Flawed

It should first be noted that at all times Sheriff Baca cooperated fully with your Committee counsel's investigation. He was interviewed by Committee counsel on June 22, 2001. At that time, given the fact that the interview was being conducted over the telephone and that it addressed matters going back several years, we requested that prior to finalizing the Report, Committee counsel share with us any draft portions that related to the facts covered in Sheriff Baca's interview. As you no doubt know, this is customary in independent investigations and is even required in some such circumstances. The practice is a prudent one--it provides an additional check and balance to ensure the accuracy of the Report. For some reason, Committee counsel rejected our request, essentially stating with no further explanation, "We will not do that." Of course, had Committee counsel shared drafts of the pertinent portions of the Report with us, the inaccuracies addressed below might have been avoided. Even more troubling, though, is the fact that Committee counsel apparently did release portions of an advance draft of the Report to at least one person, with a request that that person review the draft for accuracy. (See enclosed copy of letter dated February 25, 2002 from Committee Counsel Pablo Carillo.) Sharing draft portions of the Report with some parties but not others suggests that Committee counsel's goal was not fairness or accuracy, but rather some pre-determined conclusion. The Committee may not have been aware of this selective release of portions of the draft Report, so you may wish to question Committee counsel on the record to determine with whom Committee counsel shared the draft report, why this selective release occurred and whether others in addition to Sheriff Baca requested the same opportunity but were refused.

Further, Committee counsel has refused to release the memoranda of interviews that purportedly support the Report's findings. (Although the Report cites to numerous interviews in footnotes, Committee counsel has informed us that they will not release any memoranda or notes of interviews.) Without the disclosure of the underlying evidence, the Report is simply a conclusory narrative with no factual support. It is customary to make available transcripts of any testimony and memoranda of interviews and any other evidence underlying a report of this kind. Only then can the public determine whether the Report's findings are supported by the evidence, and the failure to produce the evidence here clearly undercuts the credibility and relevance of the Report. Even should the Committee determine for some reason to not publicly release Committee counsel's interview memoranda, notes, etc., we respectfully request that you provide any such materials relating to Sheriff Baca, to us.

Finally, at the same time the Report criticizes certain public officials for what amounts to misconduct, Committee counsel themselves appear to have violated certain legal provisions regarding the confidentiality of criminal investigative reports. Committee counsel appears to

have improperly obtained copies of investigative reports from the State of California, Bureau of Narcotics Enforcement, in violation of state law and policy. See, e.g., California Government Code Section 6254; California Attorney General Criminal Intelligence File Guidelines (intelligence information should be accessed only on a strict need-to-know basis). The irony here–that Committee counsel, in its zeal to root out poor judgment in connection with the Vignali commutation, would itself exercise such poor judgment-is apparently lost on Committee counsel, but it should not be lost on the Committee. The Committee should inquire of Committee counsel the legal basis for its acquisition and publication of confidential criminal intelligence materials, and what steps, if any, Committee counsel took to ensure compliance with applicable legal and ethical requirements in conducting its investigation.

Perhaps because of the flaws in the process described above, or for the same reasons the flaws occurred, the Report makes significant errors and several of its conclusions are simply dead wrong. As detailed below,

- Sheriff Baca at all times opposed clemency for Carlos Vignali;
- Sheriff Baca refused to write a letter supporting clemency for Carlos Vignali and never initiated any contact with the White House;
- Only the White House could determine to grant or deny Vignali's clemency request, and Sheriff Baca was unaware of the criteria used to make such determination;
- There is no evidence to support the Report's absurd finding that Sheriff Baca actually supported clemency but wished to avoid a "paper trail;"
- Hugh Rodham and White House counsel misrepresented Sheriff Baca's position for their own interests; and
- Contrary to the Report, Sheriff Baca had no knowledge of any alleged misconduct by Horacio Vignali and the Report's suggestion that he had constructive knowledge of statements in confidential DEA investigative reports evidences a fundamental misunderstanding of law enforcement policies, procedures and ethics.

These issues are addressed separately below.

Sheriff Baca Opposed Clemency for Carlos Vignali

At the heart of the Report's findings is the assertion that Sheriff Baca supported clemency for Carlos Vignali and knew or should have known that his actions would be construed as supporting clemency. This assertion flies in the face of the undisputed fact that Sheriff Baca opposed clemency, believed Vignali was guilty and believed he should serve his sentence. Although it is the subject of only a vague reference in the Report, Sheriff Baca described vividly for Committee counsel how he told Horacio Vignali in no uncertain terms that his son was guilty, that he should serve his time and that Horacio Vignali should "get over it." When Horacio Vignali asked the Sheriff to write a letter supporting clemency, he flatly refused. The Report thus ignores a fundamental distinction between Sheriff Baca and the other public figures who were involved in this episode--Sheriff Baca never supported clemency for Carlos Vignali.

Sheriff Baca Refused to Write a Letter Supporting Clemency and Never Initiated Any Contact with the While House

After skipping over the evidence establishing that Sheriff Baca did not support the Vignali commutation, the Report then creates the misleading impression that Sheriff Baca actively sought to advocate on behalf of Carlos Vignali's clemency application. The Report should make clear that as a matter of fact, this never happened. Sheriff Baca never asked the White House or the Department of Justice to give favorable consideration to the application, or even to review the case, as did the other public figures who communicated with the White House regarding this matter.

As Sheriff Baca told Committee counsel repeatedly in his interview, he told Horacio Vignali that he was "wasting his money" in pursuing clemency, and that Mr. Vignali should accept the truth about his son's crimes and sentence. Sheriff Baca did write a letter in 1996 to request a prison transfer to an institution closer to Los Angeles, and then a second letter in December 2000 attesting to the Sheriff's then-opinion of Horacio Vignali's trustworthiness. But as Sheriff Baca explained to Committee counsel when he gave this letter to Horacio Vignali, Mr. Vignali told the Sheriff, "I can't use this. This doesn't do me any good. I won't use this."[1] Because it appears the letter never was provided by Mr. Vignali to the White House, it had absolutely no causal nexus to the commutation. Committee counsel was not even in possession of this letter until we produced a computer print-out of the letter shortly before Sheriff Baca's interview! Indeed, as the Report notes, White House counsel believed the Sheriff was unwilling to write a letter in support of the application. Further, unlike several other public officials, Sheriff Baca did not initiate a call to the White House to lobby on behalf of the Vignalis--he only spoke to the White House in response to a call he received from the White House Counsel's office, which as described below

[1] Like many others that disprove Committee counsel's hypothesis, these facts appear nowhere in the Report.

appears to have been the result of misrepresentations by Hugh Rodham about the Sheriff's position.

Only the White House Could Act on the Application and Sheriff Baca Was Unaware of the Relevant Criteria

The Report inexplicably dismisses statements by the Sheriff to the effect that the determination whether to grant a commutation of sentence for Carlos Vignali was one only the White House could make. This was of course exactly the case--the determination was within the sole discretion of the President and Sheriff Baca had never had cause to learn of the legal or policy criteria used to make such determination, either generally or specifically by the Clinton Administration. Indeed, the ostensible basis for your Committee's Report is to examine these very procedures and protocols. When contacted by White House counsel, the Sheriff (who of course was unaware that his position had been misrepresented by Mr. Rodham) responded with appropriate deference to the White House in this regard, and the inference that this somehow constituted tacit advocacy on behalf of commutation is baseless.

There Is No Evidence to Suggest That the Sheriff Sought to Avoid a "Paper Trail"

In another disturbing misstatement, the Report suggests that the reason Sheriff Baca refused to write a letter supporting clemency was to avoid a "paper trail." First, the Sheriff did writer two letters on behalf of Horacio Vignali, which in and of itself shatters any claim that there was any concern about a "paper trail." Moreover, the Sheriff himself produced to Committee counsel a computer print-out of the December 2000 letter, which they did not have–conduct clearly inconsistent with trying to avoid a "paper trail." Finally, the officials who supported clemency said so--in writing and/or orally. Sheriff Baca never did. His position was always clear, both with Horacio Vignali and those with whom he spoke in Washington--he never said he supported commutation; he said that only the President could make that determination based on criteria unknown to the Sheriff; and he said Horacio Vignali was someone who in the Sheriff's experience was trustworthy. Not even Machiavelli would believe that this consistent message by Sheriff Baca was actually intended to somehow constitute advocacy on behalf of Carlos Vignali. As his lifelong record shows, it is undisputed that Sheriff Baca is honest, straightforward and plain-spoken, and his statements here–with Horacio Vignali, with Hugh Rodham, with the White House, and with Committee counsel–were consistent with his character in this regard.

Hugh Rodham and the White House Misrepresented Sheriff Baca's Position to Their Own Ends

When one objectively considers the facts alleged in the Report, the only conclusion supported by the facts, common sense and reason is that Hugh Rodham and the White House counsel's office misrepresented the Sheriff's position for different but related reasons. Mr. Rodham wanted a commutation for his client and Sheriff Baca's support–had it existed–clearly would have been

helpful. The White House wanted to shield itself from the inevitable criticism that would result when it granted clemency to a convicted cocaine dealer who had failed to accept responsibility but was represented by the President's brother-in-law. Although the Report makes note of these factors, it disappointingly fails to examine the evidence regarding Sheriff Baca's actions in that context.

When Sheriff Baca returned a phone call and spoke briefly by telephone to a White Counsel staff member (apparently, Dawn Wooten), he was unaware whether his letter had been provided to anyone or not, and he certainly had no reason to believe that anyone had falsely represented that he supported the Vignali clemency application. At places, the Report shows that White House counsel actually gained their understanding of the Sheriff's purported "support" position not from anything Sheriff Baca said, but rather from Hugh Rodham, whose motives to misrepresent are self-evident, who refused to speak with Committee counsel, who according to the Report made a series of other "serious misrepresentations" in arguing in support of the clemency application to Bruce Lindsey[2] and whose character the Report calls into question.[3] (In his interview, Sheriff Baca explained how he told Mr. Rodham that he had nothing to say regarding Carlos Vignali or the clemency application. Again, the Report deletes any reference to these facts.) Elsewhere, the Report purports to cite to Dawn Wooten's recollection of her brief conversation with the Sheriff, which recollection itself appears to be inconsistent.[4] Whereas Wooten spoke to Rodham at least five times, she had only one brief conversation with Sheriff Baca during a period of intense activity in her office, and she apparently has no independent recollection of this conversation apart from a handwritten note she prepared to Bruce Lindsey that "reflects" her conversation with the Sheriff. However, the note apparently does not indicate the source of the information contained therein and it is consistent with the false statements Mr. Rodham had made to her and to Mr. Lindsey. It is virtually certain that Ms. Wooten is unable to determine whether her impression of Sheriff Baca's position actually came from him, or from Mr. Rodham's repeated misrepresentations. Unfortunately, it appears that Committee counsel did not wish to explore this conflict in the evidence and Ms. Wooten's memory was never tested with vigorous questioning from an unbiased professional. At a minimum, Ms. Wooten and Sheriff Baca appear to have been talking past one another, with Ms. Wooten assuming that what Mr. Rodham had told her was true; or perhaps Ms. Wooten's statements are part of the attempt by the truly responsible parties to use "the support of . . . Baca as a fig leaf to rationalize its decision."[5]

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[2] Report at 49.

[3] Report at 57.

[4] See, e.g., Report at 53.

[5] Report at 40.

As the Report concludes, White House staff clearly has a motive to seek to shift responsibility for this episode from themselves and Mr. Rodham, so Ms. Wooden's statements must be examined with much scrutiny. As noted above, however, neither her statements to Committee counsel nor any record of her statements have been made available for review.

The totality of the evidence supports Sheriff Baca's clear recollection that 1) he had an extremely brief conversation with a White House counsel staff member, 2) he never told the staffer that he supported clemency for Vignali, 3) no reasonable person in the position of the White House staff member with whom he spoke could have concluded that he supported clemency, and 4) he truthfully told the White House staff member that only the President was in the position to consider the merits of the application, because he and not Sheriff Baca had the relevant data and knew the process for considering commutations. Although this conclusion may not be as a salacious as the ones the Report stretches to make, it has the advantage of being accurate.[6]

The Sheriff Had No Knowledge of Alleged Misconduct by Horacio Vignali

Sheriff Baca was unaware until very recently of any "allegations" regarding misconduct by Horacio Vignali. The Report misleadingly suggests that Sheriff Baca should have known of certain statements contained in DEA-6's, i.e., confidential investigative reports from the Drug Enforcement Administration, that were in the possession of California Department of Justice agents, regarding Horacio Vignali.[7] It clearly would have been inappropriate for Sheriff Baca to use his position to access confidential law enforcement files of other agencies regarding Horacio Vignali, and there was no sufficient reason for the Sheriff to do so.[8] Indeed, as noted above, Committee counsel themselves were completely unfamiliar with the important safeguards in that they themselves may have improperly accessed confidential law enforcement records regarding criminal investigations, without any legal process whatsoever. Here again, the sacrifice of

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[6] It is somewhat ironic to say the least that Committee counsel join the Clinton White House and Hugh Rodham in seeking to blame Sheriff Baca for the White House's decision to commute Carlos Vignali's sentence. Politics makes strange bedfellows indeed.

[7] See, e.g., Report at 43 ("Sheriff Baca . . . had access to this information.")

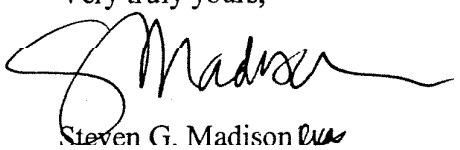
[8] When we pointed out to Committee counsel that it would have been inappropriate to investigate Horacio Vignali by reviewing other agencies' confidential files, Committee counsel responded that Sheriff Baca "could have just made a phone call" and learned the information. Of course, it would have also been inappropriate to conduct this sort of "investigation" orally, and it is unclear whom Committee counsel thought the Sheriff should have called out of more than 100 law enforcement agencies in Los Angeles County.

important legal checks and balances in the interest of a zealous, result-oriented "investigation" casts the Committee in a very poor light, and undermines the integrity of the Report's findings.[9] When the Sheriff did learn of the existence of law enforcement reports referring to Horacio Vignali, he promptly returned all campaign contributions he had received from Mr. Vignali.

Conclusion

Lee Baca is a highly respected, non-partisan law enforcement official with over 30 years of exemplary service to his community. In March he was re-elected by an overwhelming majority as Sheriff of the Nation's largest County. He supervises one of the largest custodial systems in the world, the Los Angeles County jail system, which typically houses an average of 19,000 inmates. In that capacity he clearly understands the need for sound policies and procedures regarding the appropriate treatment of sentenced convicts, and he is hopeful that your Committee's work will result in some positive reforms. If he were asked to grant early release for an inmate in the Los Angeles County jail, Sheriff Baca would carefully review the facts and apply the applicable law, which is what he assumed would occur in the case of Carlos Vignali. As a result of shoddy investigative work by overzealous investigators, however, Sheriff Baca has been unfairly blamed for the knowing, intentional decisions of others. We respectfully request that the Report be corrected as described above. If any further information is needed, please advise. Thank you for your consideration of this submission.

Very truly yours,



Steven G. Madison

SGM:wp
02170/409373.5

cc: Hon. Stephen Horn
Hon. Diane Watson
Hon. Henry Waxman
Hon. Leroy D. Baca
David Kass, Esq.

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[9] Perhaps the most outrageous statement in the Report is the assertion that Sheriff Baca chose to maintain a relationship with Horacio Vignali "rather than investigate these allegations against [him]." The obvious fallacy in this defamatory statement is that there is no evidence that Sheriff had any knowledge of any such "allegations," and he told Committee Counsel that. This statement should be stricken from the Report.

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

www.house.gov/reform

February 25, 2002

VIA FACSIMILE (323) 838-2801 AND FEDERAL EXPRESS

[redacted]

It was a pleasure speaking with you last Wednesday, February 20, 2002. As per that conversation, please review the attached pages for content and confidentiality, and provide me with any comments or suggestions you might have at your earliest convenience.

Of course, feel free to call me or Deputy Chief Counsel David Kass at (202) 225-5074, if you have any questions.

Sincerely,

Pablo E. Carrillo
Counsel

4. California Law Enforcement and Political Officials Supported Vignali's Clemency Petition Despite Serious Allegations Against Horacio and Carlos Vignali

a. There Were Extensive Allegations of Drug Trafficking Against Horacio Vignali and Carlos Vignali

The Committee has learned of numerous allegations, made to law enforcement as long as twenty five years ago, that Horacio Vignali was involved in cocaine trafficking and other illegal activity. The Committee has also discovered other allegations that Carlos Vignali was deeply involved in drug sales even more extensive than those for which he was prosecuted in Minnesota. Although the information the Committee obtained consists solely of allegations against Horacio and Carlos Vignali, it is extremely significant. These reports allege long-term criminal activity on the part of Horacio Vignali. They allege that Horacio Vignali is involved in the cocaine trade, and even is the source of supply for his son. Despite that these reports were available to Sheriff Baca and U.S. Attorney Mayorkas, both chose not to conduct any due diligence before supporting Vignali's clemency plea. Although the White House and the Justice Department also had access to these reports, apparently neither considered them. Even though these allegations have not been proven, the mere fact that there were these serious allegations against Horacio and Carlos Vignali should have ruled out the possibility of executive clemency for Carlos Vignali. Instead, these reports were never considered.

While the extensive DEA reports regarding Horacio and Carlos Vignali are being made public only now, it appears that suspicions about Horacio Vignali's role in drug trafficking were widespread and well-known to law enforcement. In interviews with Committee staff, Todd Jones and Denise Reilly, who were responsible for the investigation and prosecution of Carlos Vignali in Minnesota, both indicated that they believed that Carlos Vignali was not the "end of the line," and were aware of the widespread belief among investigators that Horacio Vignali was involved in drug trafficking with his son.[246] There was even more detailed knowledge regarding allegations against Horacio and Carlos Vignali among law enforcement officers in California. According to a number of investigators working for local law enforcement in Southern California, both Horacio and Carlos Vignali had been the subjects of major drug investigation.[247] As the following reports indicate, a number of law enforcement agencies apparently received credible information indicating that Carlos and Horacio Vignali were personally involved in

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[246] *See* Telephone Interview of Judge Denise Reilly, Juvenile Court, 4th Judicial District of Minnesota (Hennepin County) (May 31, 2001); Telephone Interview of Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2000).

[247] In the course of its inquiry, the Committee has learned that while the White House was reviewing Carlos Vignali's clemency petition, Horacio Vignali and associates of Vignali were part of an Organized Crime Drug Enforcement Task Force ("OCDETF") investigation in the Los Angeles area. While Carlos Vignali's petition was pending, various federal and California law enforcement agencies were investigating Carlos and Horacio Vignali's involvement in supplying narcotics before Carlos' conviction in Minneapolis and Horacio Vignali's personal and business relationship with alleged California drug figure George Torres. In this case, the OCDETF investigation was being conducted by the federal government in cooperation with various agencies of the California State Department of Justice, including, the Bureau of Narcotics Enforcement ("BNE"), and various local law enforcement agencies, such as, the Santa Barbara Regional Narcotics Enforcement Team ("SBRNET") and the Downey City Police Department. Collectively, the state and local effort was coordinated by the "L.A. Impact" Task Force.

large-scale drug dealing. These same agencies also received allegations indicating that the Vignalis were part of a large organized drug dealing ring headed by George Torres.

The first series of reports indicate that there were allegations of drug dealing against Horacio Vignali dating back to 1976. Among those reports is a DEA-6, an internal investigative report, which notes that:

> [Horacio] Carlos VIGNALI[248] – Co-owner of the C&H Auto Body Shop. His drug relationship with the [redacted] Organization is also unknown. VIGNALI however is a close personal friend of [redacted]. In November, 1975, he negotiated with ATF Agents to sell a machine gun and stated to them that he had also smuggled heroin into the United States utilizing automobiles. Since current intelligence indicates that the remainder of the [redacted] Family in Los Angeles, [redacted] are still dealing in multi-kilogram quantities of heroin, it is recommended that a grand jury probe be initiated with the object of eliminating the remaining [redacted] Organization in Los Angeles by obtaining indictments on [redacted] possibly other members of their organization such as [redacted] [Horacio] Carlos VIGNALI, [redacted].[249]

A December 1, 1976, DEA report contains similar information:

> [Horacio] Carlos VIGNAL [sic] – the [redacted]s used his body shop in Los Angeles to take heroin out of the drive shafts of vehicles brought into the United States from Mexico.[250]

A more recent set of DEA reports contain additional allegations that Horacio Vignali is involved in drug trafficking. They also show that the DEA received information indicating that Horacio was involved in the drug trade with his son Carlos. A March 19, 1993, report states:

> The "traps", (hidden compartments) were built into the truck through Carlos VIGNALI Jr. for $5,000.00. [Redacted] has also purchased cocaine from Carlos VIGNALI Jr. of Los Angeles. . . . VIGNALI's father Carlos VIGNALI aka "pops" owns a body shop, at 1260 Figueroa and is the source of supply for his son.[251] . . . An associate of VIGNALI, Jorge TORRES aka 'G' owns [Numero Uno] Market on Jefferson St. in Los Angeles. Across the street from the Market, TORRES maintains a warehouse full of luxury vehicles and tractor trailers used to transport cocaine. The warehouse also has a penthouse complete with a casino

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[248] The DEA report refers to "Carlos Vignali," but it is apparent that it is referring to Horacio Vignali, or "Carlos Vignali, Sr.," as he is known to many of his associates. The date of birth listed for Vignali, as well as other personal information, appears to correspond to that of Horacio Vignali.

[249] DEA document production Bates No. V-DEA-00009 (exhibit ____).

[250] DEA document production Bates No. V-DEA-00012 (exhibit ____).

[251] This information casts the following testimony from Horacio Vignali at Carlos' trial in a new light: "I treated him like my best friend, my partner, anything he needed, I would always provide for him, always. It doesn't matter what, I always provided it for him." *See* Transcript of Trial, *U.S. v. Vignali* (D.Minn. Dec. 1, 1994) at 297.

the report, the informant stated that Vignali showed his man a kilogram of cocaine so he would know the cocaine was sufficient.[260]

In addition to the reports listed above, two recent reports indicate that the DEA received information linking Horacio Vignali to a large-scale drug dealing organization headed by George Torres.[261] A September 25, 1997, DEA Case Initiation Report states that Torres' organization:

> Has been in existence since the middle 1980's when it was "closely associated with the [redacted] family in their drug trafficking. By the early 1990's this group were [sic] transporting approximately 1,800 kilograms of cocaine into the Los Angeles area from Mexico. At that time they were smuggling the cocaine using the [redacted] TORRES's tractor-trailer trucks, concealing the drugs inside laundry detergent and jalapeno chilli [sic] cans." [Redacted.] Since that time TORRES has continued to be involved in drug trafficking and information shows that his organization supply [sic] various drug trafficking organizations throughout the United States. TORRES' organization has used illicit profits derived from drug trafficking to buy legitimate businesses and properties throughout Los Angels [sic] and southern California. . . . Investigators believe that the organization uses these businesses to laundry [sic] its drug proceeds.[262]

A September 16, 1998, DEA report about Torres reported that:

> To date, the investigation shows that the TORRES organization is involved in the importation and distribution of drugs throughout the United States. Latest intelligence reveals that this group is distributing approximately one hundred (100) kilograms of cocaine per month. [Redacted.] George TORRES is the head of this organization. TORRES' direct associates include [redacted] Carlos Vignali. [Redacted] Carlos Horatio [sic] VIGNALI's role in the organization is relatively unknown at this time. It is believed that VIGNALI functions as a financial partner in the organization. VIGNALI has been involved in organizing meetings between TORRES and individuals with extensive criminal backgrounds.[263]

The report goes on to describe the scope of Torres' activities:

> The TORRES organization has used its profits from drug trafficking to purchase legitimate businesses and properties throughout the Southern California area . . . The grocery and wholesale business are cash intensive thus making it easy to launder illicit funds through them. In 1996, TORRES' businesses had sales of

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[260] *See id.*

[261] At trial, Carlos Vignali conceded that Torres was a friend of the family and, in particular, of his father. *See* Transcript of Trial, *U.S. v. Vignali* (D.Minn. Nov. 29, 1994) at 227. Carlos appears to have used a variation of George Torres' name – "Charles Torres" – when he subscribed for his pager. As illustrated above, because Carlos used that pager to communicate with his coconspirators in trafficking cocaine, he used "Charles Torres" to conceal his true identity.

[262] DEA document production V-DEA-00110 (exhibit).

[263] DEA document production (unnumbered) (exhibit).